

Report
of the

NEBRASKA

Water Policy Task Force



to the
2003 Nebraska Legislature

December 2003

Report of Water Policy Task Force

**REPORT OF THE
NEBRASKA WATER POLICY TASK FORCE
TO THE 2003 NEBRASKA LEGISLATURE**

Report of Water Policy Task Force

ABSTRACT

In, 2002, the Nebraska Legislature found that significant issues exist concerning Nebraska's laws governing the integrated management of surface water and groundwater. To examine these issues, the Legislature passed LB 1003. LB1003 created a Water Policy Task Force, to be appointed by the Governor. Governor Mike Johanns appointed 49 members to the Water Policy Task Force to discuss these issues, identify options for resolution of these issues, and, by December 2003, make recommendations to the Nebraska legislature and the Governor relating to any water policy changes deemed desirable. Specifically the task force was asked to:

- ? Review existing laws related to the integrated management of hydrologically connected surface water and groundwater (LB 108) and determine if any changes are needed to adequately address Nebraska's conjunctive use and integrated management of these resources;
- ? Evaluate the utility of allowing permanent and temporary transfers and leasing of water rights and creating a water banking system and
- ? Determine what issues related to inequities between surface water and groundwater users need to be addressed and what actions need to be taken.

The Task Force, its Executive Committee and various sub-committees met on a regular basis over the last 18 months. As a result of their deliberations the Task Force recommends that the basic components of existing surface water and groundwater law remain intact; the Department of Natural Resources (DNR) will still administer surface water rights under the priority system and the Natural Resources Districts (NRD) will still administer groundwater uses at the local level. The Task Force also recommends the basic components of integrated management of surface water and groundwater, adopted by LB 108, remain intact. The Task Force, however, believes that a more proactive approach is needed in the integrated management of surface water and groundwater. Therefore, the Task Force recommends that Nebraska build upon the components in LB 108 by adopting a proactive component. The proactive approach will require DNR to annually review the river basins of the state to determine which are fully appropriated. If DNR determines that a basin, sub-basin or reach is fully appropriated, there will be an immediate temporary stay on all new water uses until an integrated surface water/groundwater management plan is implemented. The integrated management plan shall be jointly developed by DNR and the NRD(s) and be implemented within three to five years. The plan's goals will include sustaining of a balance between water uses and water supplies so that the economic viability, social and environmental health, safety and welfare of the basin can be achieved and maintained in both the near term and long term.

If DNR and NRD(s) cannot agree on the plan or its implementation, the dispute will be submitted to an alternative dispute resolution process and, if there is still no resolution, to an Interrelated Water Review Board, consisting of the Governor or his or her designee who has knowledge of surface water and groundwater issues, another appointee of the Governor, and three additional members appointed by the Governor from a list of at least six names provided by the Natural Resources Commission.

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In order to allow economic development to occur in basins that are fully appropriated and in which no new water uses are allowed, the Task Force recommends that temporary and permanent transfers and changes of uses of water rights be allowed. The transfers are limited, however, in that there can be no permanent changes of use for surface water rights that involve a change in the preference category. Temporary surface water appropriations across preferences can be granted for up to 30 years with the possibility of renewal, subject to review by DNR. The Task Force further proposes that existing groundwater laws be changed to give authority to NRDs with groundwater management plans to require NRD approval of transfers of groundwater off the land and transfers to rights to use groundwater that result from NRD imposed allocations. The Task Force is not recommending the development of a water rights banking system at this time.

A major issue the Task Force considered was how to deal with inequities in basins that are presently over-appropriated. In such situations, the use of more water than basin supplies can sustain has produced hardship, primarily to surface water users. The Task Force identified two basins that were clearly being affected by overuse of the water supply, the Republican Basin and the Platte River Basin above Elm Creek, Nebraska. The Task Force recommends that the joint integrated management plans currently being developed by DNR and NRDs in the Republican Basin to ensure Nebraska's compliance with the Republican River Compact be the primary action taken to address problems in that basin. For the Platte River Basin, the Task Force recommends DNR and affected NRDs develop a basin-wide plan and integrated management plans that will incrementally reduce the difference between the present level of development in excess of supply and the fully appropriated level of development. During the first increment DNR and affected NRDs shall address the impacts of stream flow depletions caused by water use begun after July 1, 1997 and prevent stream flow depletions that would cause noncompliance by Nebraska with any formal state contract entered into no earlier than July 1, 1997. During the first increment DNR and NRD(s) will also pursue voluntary efforts, subject to the availability of funds, to offset any stream flow depletive effects from uses initiated prior to July 1, 1997 but which occur after such date.

The Task Force recommendations are the result of a consensus based decision-making process. Task Force members each decided that they could support the package being proposed, primarily because there are sufficient benefits for them in the package that outweigh any adverse aspects of the package. The Task Force has agreed that for consensus to remain, the legislation must be considered as a package.

The Task Force considers adequate funding to be critical to the successful implementation of the Task Force proposals to address the concerns that led to the passage of LB 1003. Without a funding component and a firm commitment to seek the necessary funding, a consensus of the members of the Task Force would not have been reached. The Task Force recommends establishing a Water Resources Trust Fund that will have a dedicated funding source. The Task Force also recommends NRD groundwater management activities be exempt from the statutory 2½% budget lid placed on local subdivision budgets. The NRDs also should be able to supplement the funds they can raise through their maximum 4½ cent property tax levy with an additional levy, perhaps one imposed only in groundwater management areas or in NRDs with a groundwater management area. Various methods of funding these activities are included in the Task Force's proposed legislation.

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I. Legislative Charge to Create a Water Policy Task Force

The 2002 Nebraska Legislature found that there are significant issues concerning the current system of management of hydrologically connected surface water and groundwater. By passage of LB 1003 (Appendix A) the Legislature directed that a 49 member Water Policy Task Force (Task Force) be created to:

1. *Review LB 108, which was passed in 1996, to determine what, if any, changes are needed to adequately address Nebraska's conjunctive use management issues;*
2. *Evaluate the utility of allowing temporary water transfers, and, if deemed useful, develop draft legislation and procedures for authorizing and implementing a temporary water transfer law*
3. *Evaluate the utility of authorizing additional types of permanent water transfers, and, if deemed useful, develop draft legislation and procedures for authorizing and implementing additional types of permanent water transfers;*
4. *Determine the usefulness of water leasing or transfer and development of a potential water banking system that would facilitate the temporary or permanent transfer of water uses; and*
5. *Determine what other ways, if any, inequities between surface water users and groundwater users need to be addressed and potential actions the state could take to address any such inequities.*

The Task Force was required to discuss the issues described above, identify options for resolution of such issues, and make recommendations to the Legislature and the Governor relating to any water policy changes the Task Force deems desirable. The Task Force was to report back to the Legislature and Governor by December 31, 2003.

This report is being provided to the Legislature and Governor as required by LB 1003. The report will: 1) describe the selection of its members and procedures used to arrive at a consensus; 2) describe some of the fundamental understandings the Task Force developed as the bases for their recommendations; 3) and describe how the Task Force addressed each of the Legislature's charges to the Task Force. Legislative proposals are recommended by the Task Force provided in the Appendix B.

II. Task Force Selection, Procedures and The Consensus Building Process

As required by LB 1003 Governor Mike Johanns appointed 49 Task Force members:
Five representing the Natural Resources Districts;

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Four representing the power industry;
Five representing municipalities;
Three representing agricultural groups;
Two representing recreation interests;
Three representing environmental interests;
Twenty irrigators representing Nebraska's river basins with an equal balance between surface water and groundwater users;
Three members serving at large;
A representative from the Department of Natural Resources;
A representative from the Attorney General's Office; and the
Chair and Vice-chair of the Natural Resources Committee of the Legislature.

The appointees, the interest they represent and their affiliation and hometown are listed in Table 1; their place of residence is represented in Figure 1.

As required by LB 1003, the Task Force created an Executive Committee (Table 2) consisting of representatives selected by task force members from each of the interest groups listed above, the representatives from the Department of Natural Resources and the Attorney General's office and the Chair and Vice-chair of the Legislature's Natural Resources Committee (Table 2). On April 19, 2003, Paul Currier, an environmental representative on the Executive Committee from the Platte River Whooping Crane Maintenance Trust unexpectedly passed away. The loss of his expertise and insight into environmental issues were keenly felt. To fill the vacancy on the Task Force the Governor appointed Duane Hovorka from the Nebraska Wildlife Federation. David Sands took Mr. Currier's place on the Executive Committee.

Before the Task Force began its work, the Legislature's Natural Resources Committee hired two professional facilitators, Chris Moore and Jonathan Bartsch from CDR Associates in Boulder, Colorado to assist the work and discussions of the Task Force. Mr. Moore and Mr. Bartsch have extensive experience in facilitating and mediating water and environmental disputes throughout the United States and in the international arena. Their ability to understand the concerns and issues of individual Task Force members, combined with their experience in facilitating large group processes, proved to be extremely helpful in assisting the work of the Task Force and helping the Task Force forge a final product.

The legislature appropriated \$400,000 dollars to fund the work of the Task Force. Additional funding of \$350,000 was received from a grant from the Nebraska Environmental Trust. The funding was to be used to pay the facilitators, pay for meeting materials and meeting rooms, pay the travel expenses of Task Force members and hire technical and legal consultants to provide the necessary background information for decision making. Ultimately the Task Force only spent only a fraction of the initial budget. These cost savings were possible because of the cost-effectiveness of the facilitators, the willingness of many of the Task Force members' groups to pay their representatives travel expenses and the diligence and hard work of the Task Force

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members, who provided much of the needed legal and technical information. Significant additional help came from DNR staff and from Senator Ed Schrock's office. Special thanks are due to Ann Bleed, Deputy Director and Jim Cook, legal Counsel for DNR, for their effort.

The first meeting of the Task Force was July 29, 2002. The first meeting of the Executive Committee was July 30, 2002. In total the Executive Committee held 19 meetings and the Task Force met eight times. In addition, the Executive Committee organized its members into a number of sub-committees: the Technical data Sub-committee, the Surface Water Transfers Sub-committee, the Groundwater Transfers Sub-committee, the Equities Sub-committee, the Funding Sub-committee and the Presentation Sub-committee. The membership of these sub-committees, which met numerous times, is shown in Table 3.

One of the first actions of the Task Force was to approve the operating rules of the Task Force. The role of the Executive Committee was to develop proposals to be considered for adoption by the full Task Force. The sub-committees did the primary initial development of the concepts and proposed legislation and then provided them to the Executive Committee. The Executive Committee would review, and in some cases revise, the sub-committee proposals before presenting them to the full Task Force for final approval. Reports by the sub-committees are included with the minutes of the Executive Committee and full Task Force meetings. The Task Force and Executive Committee meetings were all very well attended. In fact, the interest in the work of the Executive Committee was so high that many Executive Committee meetings would be attended by almost the entire Task Force.

According to the Rules of Procedure adopted by the Task Force, decisions by the Task Force were not based on a voting procedure but relied on a consensus decision-making process. A consensus is the strongest form a group decision can take, because it is a settlement or solution that all participants in the decision making process accept. A consensus of the members of the Task Force was accomplished by identifying and exploring all parties' interests and assembling a package agreement that satisfied these interests to the greatest extent possible.

Achieving consensus involved, but did not require, unanimous support by all Task Force members for all elements of the settlement. In the Task Force consensus decision-making process, some members strongly endorsed particular solutions for issues while others accepted them as workable settlements or compromises.

During the deliberation and decision making process of the Task Force, if a party could not agree to a specific solution for an issue or the total package, he or she had three options. They could stand aside on the issue in question and not block the consensus, support the consensus and request that their views be added in an addendum to the final document or block consensus and request that the group announce that there was no agreement. In the end, each member of the

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Task Force had to decide whether the total package contained enough benefits to satisfy the interests of the State of Nebraska, the interest of their interest group and constituents, and their own personal interests for them to approve the package, notwithstanding some components that, although they could live with, were not to their liking.

As the work of the sub-committees and Executive Committee proceeded, if the facilitators believed a consensus was being developed, they would ask the Task Force if there was a part of the issue being proposed that could not be accepted by any member of the group. These checks were not considered to be a final approval but were primarily to determine whether the Task Force was on the right track or whether there were still issues that needed to be resolved. At several crucial points in the process, members of the Task Force expressed the concern that they could not commit to a final acceptance of a proposal until they could see the entire package. This is an important aspect of the decision making process and the resulting support for the proposed legislative package. In the end a strong consensus on the proposed package of recommendations was reached. The consensus that was achieved by the Task Force, however, is based on the assumption that the entire package as presented would eventually be accepted or rejected by the Legislature as a whole. Any substantive modification of the proposed legislative package, including changes in the funding sections, could result in a Task Force member's withdrawal of support for the package, destroying the consensus that was achieved by the Task Force.

In addition to the description of the legislative package, participants in the Task Force have added a section to this report where issues that need additional discussion and attention could be listed. Some of these issues were discussed by the Task Force; some were mainly mentioned as items that need further attention. Providing these comments, however, does not take away from the Task Force's recommendation that the proposed legislative package be accepted by the Legislature without substantive modification or amendment.

All Task Force and Executive Committee meetings were open to the public. The meeting schedule, agendas, meeting minutes and Task Force working documents, as well as the rules of procedure and other support materials were available to the public on DNR web site, <http://dnr.state.ne.us>. Notices of the meetings were also published in the Lincoln Journal Star, Kearney Daily Hub, North Platte Telegraph and the McCook Gazette. Time was set-aside at each meeting for public input.

Several nonmembers attended many of the Task Force meetings. Nonmembers also actively participated in the work of the sub-committees. Although the rules of procedure allowed the facilitators to restrict comments during the working sessions to Executive or Task Force members, the facilitators generally allowed nonmembers to participate in the discussions as if they were appointed members of the Task Force.

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During the first few meetings of the Task Force, time was set aside to review the technical and legal aspects of groundwater and surface water. Jim Goeke, from the Conservation and Survey Division of the University of Nebraska provided a particularly informative lecture on the hydrogeology of Nebraska. In addition, the Task Force heard presentations on the historical perspectives on water laws, including the Groundwater Management and Protection Act (LB 108), existing laws pertaining to the transfer of surface water and groundwater and the principles of groundwater hydrology.

Although the Task Force focused their efforts on a review of Nebraska's laws in relation to the Legislature's charge to the Task Force, the Task Force also wanted to take advantage of whatever knowledge could be gained from the experience of other states. Steven Gaul, from DNR, made an extensive review of the laws of other western states pertaining to the integrated management of surface water and groundwater. He also conducted follow-up interviews with various states' water administrators. In reviewing the laws of other states three key questions were asked: 1) What conjunctive use laws have other states enacted? 2) Were they implemented? 3) Did they successfully achieve the integrated management of surface water and groundwater? Task Force member Brian Barels also did a similar review. His review was not formally presented to the Task Force, but the resulting proposed legislation was improved by the insight he was able to provide as a result of his research.

III. Task Force Deliberations / Basic Decisions

The Task Force discussed a number of key concerns related to the legislative charge. Early in its deliberations members of the Task Force highlighted principles and goals they believed should guide the discussions and their recommendations.

The Task Force considered whether there was a need to change the basic structure of the state's surface water and groundwater laws. Ultimately, the Task Force decided to maintain the basic framework of the existing laws. The Task Force, in formulating its recommendations, chose to work within the state's existing basic institutional and legal framework governing the use of surface water and groundwater and its recommendations are intended to build and improve upon this framework.

The Task Force also recognized that certain areas of the state are already in the process of addressing interrelated water management issues. Management of overall consumptive water use (both hydrologically connected surface water and groundwater) is a necessary part of implementing the Republican River Compact settlement. The prospect of no new water depletions is being examined as part of the Platte River Cooperative Agreement negotiations. Moratoriums on new high capacity wells are in place in all three Republican River NRDs and in the North Platte NRD, the Upper Niobrara-White NRD and portions of the Central Platte NRD and South Platte NRD. Extensive modeling and study of the Platte is also underway through the

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Platte River Cooperative Hydrology Study (COHYST). Whatever measures are adopted will need to be carefully crafted to coordinate with what is already in place.

From the beginning and throughout their deliberations, the Task Force very strongly insisted that the integrated management of surface water and groundwater cannot be successful unless there is sufficient funding to: 1) provide good technical data to decision makers; 2) develop, implement and enforce integrated management plans, and, 3) in basins that are over-appropriated, enact tools to reduce the inequities between users. If a water user is going to be asked to restrict or forego the use of water, it is imperative the decision be based on sound science. If water users have faith that decisions are scientifically based, they are more likely to understand and cooperate in implementing an integrated management plan.

The Task Force Funding sub-committee examined a variety of options that could be used to fund interrelated water management activities and concluded that it was important to have a dedicated state funding source that could be combined with a match from local funds and hopefully additional federal and other grant funds. The dedicated funds will be used to fund a Water Resources Trust Fund, which will be used to fund interrelated water management activities. The Task Force would also support making that dedicated fund large enough to also fund the existing Natural Resources Development Fund, the Nebraska Soil and Water Conservation Fund, the Small Watersheds Flood Control Fund and other groundwater management funds. This funding source will replace existing state funding sources for those activities.

The following sections outline in greater detail the Task Force recommendations in regards to the Legislative charges.

IV. Legislative Charge Number 1: Review LB 108 to determine what, if any, changes are needed to adequately address Nebraska's conjunctive use management issues.

The Task Force reviewed existing statutes, primarily 46-656.28, pertaining to the integrated management of surface water and groundwater, otherwise known as LB 108. The Task Force concluded that LB 108 did not need to be radically changed but several concerns did need to be addressed. The primary concern was that existing law was not sufficiently proactive to effectively manage hydrologically connected surface water and groundwater to prevent the development of problems and conflicts before they occurred. Another major concern was that the law, while allowing for the integrated management of surface water and groundwater resources, did not require such management, even when it was clear that such management was needed to avoid conflicts. To address these concerns the Task Force is proposing a more “proactive approach” that will require certain planning and management actions be taken if DNR determines that water uses in a river basin, sub-basin or reach are fully using the available water supply and should be considered to be fully appropriated.

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Under this approach DNR will make an annual determination of which basins were fully appropriated. In order to minimize the sudden proliferation of new wells or surface water uses as a result of such a declaration, if DNR determines a basin is fully appropriated, there will be an immediate suspension on all new uses until either DNR or the NRD made a considered determination that new uses could be allowed. In addition, in fully appropriated areas DNR and affected NRD(s) are required to jointly develop an integrated management plan for surface water and groundwater use within three to five years. A required goal of the plan shall be to manage all hydrologically connected surface water and groundwater use to sustain a balance between water uses and water supplies so that the economic viability, social and environmental health, safety and welfare of the basin, sub-basin or reach can be achieved and maintained for both the near term and the long term. The plan is also to provide protection for existing uses and manage future development.

V. Legislative Charges Number 2, 3, and 4: Evaluate the utility of allowing temporary water transfers, additional types of permanent water transfers, water leases and the development of a water banking system to facilitate temporary or permanent transfers of water uses

The Task Force concluded that if economic development was to be allowed to continue in basins that were closed to new uses, temporary and permanent transfers in the location or use of water rights and permits will need to be allowed. Water leases are considered to be the same as a temporary transfer in location of use or change in type of use.

The Task Force is proposing that existing groundwater laws be changed to give authority to an NRD with a groundwater management plan to require NRD approval of transfers of groundwater off the land where the water is withdrawn and transfers of rights to use groundwater that result from NRD imposed allocations. Both temporary and permanent transfers of groundwater will be allowed. In addition, the Task Force is recommending that any person intending to transfer groundwater off the overlying land for environmental purposes must obtain a permit from the NRD in which the withdrawal will occur. If an NRD chooses to grant such permits, certain permit conditions will have to be met.

For surface water, the Task Force is recommending maintaining the existing law, which requires any transfer in location or change in type of right or use to obtain a permit from DNR. However, the existing law would be changed to explicitly authorize changes in uses and types of permits and to allow both temporary and permanent transfers or changes in type of right and use.

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However, changes that involve a change in a preference category will only be allowed on a temporary, not a permanent basis. Temporary permits could be for up to 30 years with the possibility of renewal after a review by DNR. The Task Force is also recommending other changes that will expedite the surface water transfer and change process for certain de minimis types of transfers.

In reviewing existing surface water transfer laws, the Task Force also looked at the state's adjudication statutes. As a result of this review, the Task Force is suggesting that several changes be made to the statutes to expedite the adjudication process. The Task Force recommends that the period allowed for nonuse before a water right is cancelled be changed from three to five years. Nonuse will be allowed for up to 15 years under certain conditions. The Task Force is also recommending that an appropriator be allowed to retain a diversion rate of greater than one cubic foot per second per seventy acres if the higher rate is needed to meet the crop irrigation requirement. However, the new diversion rate cannot be greater than that in the existing permit.

The Task Force determined that a proposal on the development of a banking system for surface water and groundwater uses was not necessary at this time. The development of a banking process should occur if and when there appears to be a need for such a system in the future.

VI. Legislative Charge Number 5: Determine what other ways, if any, inequities between surface water users and groundwater users need to be addressed and potential actions the state could take to address any such inequities.

The Task Force recommends a process to address the disparity between a currently over-appropriated level of development and a fully appropriated level of development in the North Platte Basin, South Platte Basin and Platte River Basin above Elm Creek. In this process each NRD in the over-appropriated area shall work with DNR to develop a basin-wide plan that will serve as a guide for the development of plans for each NRD in the area. In addition within three to five years DNR and affected NRDs will jointly develop individual integrated management plans for each NRD that will identify the difference between the current over-appropriated level of development and a fully appropriated level of development in the basin and adopt an incremental approach to eliminate the difference. During the first increment DNR and affected NRD shall address the impacts of stream flow depletions caused by water use begun after July 1, 1997, and prevent stream flow depletions that could cause noncompliance by Nebraska with an interstate compact, decree or formal state contract entered into no earlier than July 1, 1997. During the first increment DNR and NRD(s) will also pursue voluntary efforts, subject to the availability of funds, to offset any stream flow depletive effects from uses initiated prior to July 1, 1997 that impact the stream after such date. Within 10 years of adoption of the first increment, the affected NRDs and DNR shall determine whether subsequent increments are

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needed and eliminate the difference between the over-appropriated level of development and the fully appropriated level of development and achieve the long-term goals of the plan and, if necessary, adopt a second increment. The process shall continue until the NRDs and DNR determine the basin has reached a fully appropriated status.

VII. Funding Recommendations

Following are two alternative options developed by the Task Force for funding the proposed recommendations. Both alternatives call for a dedicated source of funding.

Alternative I

Early in the Task Force deliberations, it became abundantly clear to Task Force members that effective implementation of these recommendations will require a commitment on the part of the state and the NRDs to provide an adequate, stable source of funding. This funding will be particularly important in over-appropriated areas where inequities between surface water and ground water users must be addressed. With the passage of LB 108, the Legislature did create the Interrelated Water Management fund to address interrelated water management issues. However, for a variety of reasons, it was never funded. Individual NRDs that have implemented a groundwater management area are already spending substantial sums, as much as 65% of their entire NRD budget. At least two of the five NRDs that presently do not have a groundwater management area are contemplating establishing one in the near future. Many NRDs are concerned they will not have the funds to implement a management area because they are already close to the limit of their maximum available tax levy funding. Finding funds for an additional Integrated Surface/Groundwater Management Plan would further increase their burden and concern.

The Task Force identified the following categories of interrelated water management activities as needing funding.

1. Research and Data Analysis Needs
 - ? Data Gathering/Organization
 - ? Modeling/Analysis Efforts
 - ? Local Specialized Studies
2. Development and Implementation of Integrated Management Plans
 - ? NRD staff
 - ? DNR staff

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3. Tools in Integrated Management Plans
 - ? Alternative Supplies
 - ? Incentives/Cost-Share to Reduce Water Usage
 - ? Water Transfer Mechanisms
4. Other Groundwater Management Activities

Estimates of the annual funding needs for each category are found in the table on page 12 entitled “Annual Budget Detail of New Funding Package.” The Task Force estimates that the Research/Data, and the Development and Implementation of Integrated Management Plans categories will cost approximately \$1.9 million annually. The estimate was based on the cost of existing studies and models like the Cooperative Hydrology Study (COHYST) or the models under development in the Republican River basin and on estimates of the costs to catalog existing data and information, place the existing data in a usable form and identify and fill the data gaps. Of the total amount, the NRDs estimate their portion of the research and data collection will cost just over \$700,000. It is important to note these estimates do not include money for additional staffing at DNR or the affected NRDs to implement integrated management plans. DNR estimates additional staff of 3 positions will be needed to carry out the Task Force recommendations. The affected NRDs will also need additional positions.

It is estimated that the Tools in the Integrated Management Plans category will need a total funding of approximately \$4.2 million annually. This money will be used to fund the implementation of programs within the integrated management plans to provide water to offset or mitigate inequities between water users or reduce water usage in over-appropriated basins. Specific uses of this funding could be to provide alternative supplies, buy-out water rights, provide incentives to reduce water usage, fund cost-share programs to adopt management practices or technologies that reduce water use, or fund water leasing or other water transfer mechanisms.

The Other Groundwater Management Activities category contains a small amount of funding that could be used for groundwater management activities rather than interrelated water management activities per se. Groundwater Management Activities are defined as activities involving planning and implementation of the Groundwater Management and Protection Act as presently codified in 46-656.01 through 46-656.67.

The Task Force Funding Subcommittee considered a wide range of possible funding sources including continuing to rely on appropriations from the Legislature, federal funds and grants from the Nebraska Environmental Trust Fund. The preferred funding mechanism of the Subcommittee was to implement some kind of dedicated revenue source. Ideas considered

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included a per capita tax, an increased and/or dedicated sales tax, or a dedicated increase in income taxes. Also considered was establishing fees or taxes on both agricultural and nonagricultural water use. After much discussion the Task Force decided to recommend that funding for the needs identified above come from the appropriate mix of state and local funding.

The Task Force believes that water is so essential to agriculture, the environment, industry, human health and well being, and the overall economic viability of the state, that leaving the funding of the state portion to the fluctuation and uncertainty of the annual appropriations process is unwise. Therefore, the Task Force recommends funding the state portion through the creation of a Water Resources Trust Fund with a dedicated source of funding. The Task Force also recommends the NRDS must provide a 20% local match to receive funds from the Water Resources Trust Fund. The Task Force recommends .05 of 1¢ of state sales tax collected be dedicated to the Water Resources Trust Fund. The Task Force further recommends the exemption of NRD groundwater management activities from the 2 ½ percent budget lid. The NRDs also should be able to supplement the funds they can use through the 4½ cent property tax levy with an additional levy imposed only in Groundwater Management Areas. Finally, the Task Force recommends the state and NRDs utilize other possible funding sources like the Environmental Trust Fund and federal government to the fullest extent possible. The specifics of the recommended package are as follows:

(A) State Funding

- (1) Create a **Water Resource Trust Fund** and dedicate .05 of 1 cent of sales tax (approximately \$11.1 million annually) towards the fund. The Funding amount will support the implementation of Integrated Surface/Groundwater Management Plans as well as a wider spectrum of interrelated water management activities, water funds and other water management activities, including **about \$6.3 million of current appropriations to the Nebraska Resources Development Fund, the Nebraska Soil and Water Conservation Fund and the Small Watersheds Flood Control Fund will be replaced by this new source.**
- (2) The **Water Resource Trust Fund will be distributed** as follows:
 - (a) **Dedicate at least 40% of annual receipts** (40% of 11.1 million will be approximately \$4.4 million) to funding the interrelated water management needs identified above.
 - (b) **Dedicate up to 60% of annual receipts** to existing programs like the Nebraska Resources Development Fund, Soil and Water Conservation Fund, and Small Watershed Fund. (60% of \$11.1 million will be approximately \$6.7 million).

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- (c) The balance of funds remaining at the end of a year will be carried over in the Water Resources Trust Fund to be used for the above purposes in future years or to be distributed for groundwater management activities and water quality activities.
 - (d) The Natural Resources Commission with input from the Director of DNR will establish rules for the distribution of funds according to guidelines above.
 - (e) After 10 years, the percentages of annual receipts to the fund dedicated above will be at the discretion of the Natural Resources Commission.
- (3) The Water Resources Trust Fund could also receive income from other dedicated sources, federal source or private grant funds or contributions.

(B) Local Funding

- (1) To use the Water Resources Trust Fund, NRDs must provide matching funds of at least 20% to implement tools in integrated management plans. In addition, NRDs will be subject to matching funds requirements already required in existing DNR programs.
- (2) Exempt NRD groundwater management activities from the statutory 2½% budget lid placed on NRD budgets. The budget lid exemption is needed to allow NRDs to budget the necessary funds for matching contributions.
- (3) Authorize the NRDs to supplement the 4½ cent property tax levy authority with an additional levy authority of 1.8 cents imposed in groundwater management areas.

(C) Other

- (1) The Water Policy Task Force expects the Environmental Trust Fund to continue to prioritize and direct funding towards water management activities. The Environmental Trust Fund has prioritized funding of water activities in its grant program. Last grant year, roughly \$1 million in grants were awarded to funding of projects and activities related to water issues.

Annual Budget Detail of New Funding Package⁽¹⁾

	State Contributions to Nebraska <u>Water Trust Fund</u>	Local Match Local <u>Expenditures</u>	<u>Total</u>
1. Existing DNR Funds			
Resources Development Fund(2)	3,600,000	1,106,940	

Report of Water Policy Task Force

	Small Watersheds(3)	24,000	
	Soil & Water Cons. Fund(4)	2,700,000	2,050,000
	Interrelated Water Mgmt. Fund	----	
2.	Interrelated Research/Data/ Planning/Implementation	1,193,000	707,000
	Data Gathering/Organizing		
	COHYST Type Studies		
	Local Specialized Studies		
	Planning and Implementation		
3.	Tools in Over-Appropriated Basins	3,500,000	700,000
	Alternative Supplies		
	Incentives/Payments		
	Compensation		
	Water Transfer Mechanisms		
4.	Discretionary/Other GW Mgmt. Funding⁽⁵⁾	83,000	(5)
	TOTAL	11,100,000	4,563,940

- (1) Existing DNR fund amounts are based upon FY 03 appropriations.
- (2) Nebraska Resources Development Fund figures are based upon appropriations in FY 03 and local match provided in FY03. FY 03 was a year with significantly higher appropriations to the NRDF than the years immediately preceding it. There was also some lag between receipt of funds and the point at which they are spent on a project. Therefore, while appropriations to the Fund in FY 03 were at \$3.6 million, expenditures from the Fund were actually only about \$2 million.
- (3) The Small Watersheds Flood Control Fund is currently minimally funded, although need/demand levels could change in the future due to project rehabilitation needs or other factors.
- (4) The Nebraska Soil and Water Conservation Fund amounts have been adjusted downward to account for a temporary influx of separate funding being used for installation of well meters in the Republican Basin. Local match for Nebraska Soil and Water Conservation Fund expenditures is a rough estimate based upon approximate landowner FY03 cost share plus a small amount added for local NRD administrative match. Local match for Republican Basin meters has also been removed from that amount. The value of Federal contributions through Natural Resources Conservation Service technical assistance are not counted, but will likely add about 20% to the local match if they are included in that category.
- (5) No attempt was made to identify individual NRD expenditures already occurring in this category, but they are substantial. The budget amounts in the “*Discretionary/Other GW Mgmt .Funding*” category should be viewed as only a small portion of the total funding already going into these activities.

Report of Water Policy Task Force

Alternative II

Early in the Task Force deliberations, it became abundantly clear to Task Force members that effective implementation of these recommendations will require a commitment on the part of the state and the NRDs to provide an adequate, stable source of funding. This funding will be particularly important in over-appropriated areas where inequities between ground water and surface water users must be addressed. With the passage of LB 108 in 1996, the Legislature created the Interrelated Water Management fund to address interrelated water management issues. However, for a variety of reasons, it was never funded. Individual NRDs which have implemented a groundwater management area are already spending substantial sums, as much as ___% of the ir entire NRD budget. At least two of the five NRDs that presently do not have a groundwater management area are contemplating establishing one in the near future. Many NRDs are concerned they will not have sufficient funds to properly implement a management area because they are already close to the limit of their maximum available tax levy funding. Finding funds for an additional Integrated Surface/Groundwater Management Plan would further increase their burden and concern.

The Task Force identified the following categories of interrelated water management activities as needing funding.

4. Research and Data Analysis Needs
 - ? Data Gathering/Organization
 - ? Modeling/Analysis Efforts
 - ? Local Specialized Studies
5. Development and Implementation of Integrated Management Plans
 - ? NRD staff
 - ? DNR staff
6. Tools in Integrated Management Plans
 - ? Alternative Supplies
 - ? Incentives/Cost-Share to Reduce Water Usage
 - ? Water Transfer Mechanisms
4. Other Groundwater Management Activities

Estimates of the annual funding needs for each category are found in the table on page – entitled “Annual Budget Detail of New Funding Package.” The Task Force estimates that the Research/Data, and the Development and Implementation of Integrated Management Plans categories will cost approximately \$1.9 million annually. The estimate was based on the cost of existing studies and models like the Cooperative Hydrology Study (COHYST) or the models under development in the Republican River basin and on estimates of the costs to catalog existing data and information, place the existing data in a usable form and identify and fill the data gaps. Of the total amount, the NRDs estimate their portion of the research and data

Report of Water Policy Task Force

collection will cost just over \$700,000. It is important to note these estimates do not include money for additional staffing at DNR or the affected NRDs to implement integrated management plans. DNR estimates additional staff of 3 positions will be needed to carry out the Task Force recommendations. The affected NRDs will also need additional positions.

It is estimated that the Tools in Integrated Management Plans category will need total funding of approximately \$4.2 million annually. This money will be used to fund the implementation of programs within the integrated management plans to provide water to offset or mitigate inequities between water users or reduce water usage in over appropriated basins. Specific uses this funding could include the development of projects to provide alternative supplies, fund buy-outs of water rights, provide incentives to reduce water usage, fund cost-share programs to adopt management practices or technologies that reduce water use, or fund water leasing or other water transfer mechanisms.

The Other Groundwater Management Activities category contains a small amount of funding that could be used for groundwater management activities rather than interrelated water management activities per se. Groundwater Management Activities are defined as activities involving planning and implementation of the Groundwater Management and Protection Act as presently codified in sections 46-656.01 through 46-656.67.

The Task Force Funding Subcommittee considered a wide range of possible funding sources including continuing to rely on appropriations from the Legislature, federal funds and grants from the Nebraska Environmental Trust Fund. The preferred funding mechanism of the Subcommittee was to implement some kind of dedicated revenue source. Ideas considered included a per capita tax, an increased and/or dedicated sales tax, or a dedicated increase in income taxes. Also considered was establishing fees or taxes on both agricultural and nonagricultural water use. After much discussion the Task Force decided to recommend that funding for the needs identified above come from the appropriate mix of state funds and local funds.

The Task Force believes that water is so essential to agriculture, the environment, industry, human health and well being, and the overall economic viability of the state that leaving the funding of the state portion to the fluctuation and uncertainty of the annual appropriations process is unwise. Therefore, the Task Force recommends funding the state portion through the creation of a Water Resources Trust Fund with a dedicated source of funding. The Task Force also recommends NRDs provide a 20% local match to receive funds from the Water Resources Trust Fund. The Task Force recommends a minimal percentage of the state sales tax collected be dedicated to the Water Resources Trust Fund. The Task Force further recommends the exemption of NRD groundwater management activities from the 2 ½ percent budget lid and providing NRDs with additional levy authority to implement groundwater management activities. Finally, the Task Force recommends the state and NRDs utilize other possible funding sources like the Environmental Trust Fund and federal government to the fullest extent possible and that the Legislature consider funding other natural resource programs administered by the Dept. of Natural Resource Programs through the Water Resource Trust Fund.

Report of Water Policy Task Force

The specifics of the recommended package are as follows:

(A) State Funding

- (3) Create a **Water Resource Trust Fund** and dedicate a minimal percentage of state sales tax collected to the fund. The amount dedicated would amount to 1/50th of one cent of each sales tax dollar collected generating approximately \$4.7 million.
- (4) The fund would support the state's contribution towards research, data gathering, model development, and implementation of Integrated Surface/Groundwater Management Plans as well as tools utilized in the plans including alternative supplies, cost-share programs, buy-outs of water rights, water leases and other water management activities.
- (5) The fund will be administered by the Dept. of Natural Resources. The Natural Resources Commission with input from the Director of DNR will establish rules for the distribution of funds.
- (6) The balance of funds remaining at the end of a year will be carried over in the Water Resources Trust Fund to be used for the above purposes in future years or to be distributed for groundwater management activities and water quality activities.
- (7) The Water Resources Trust Fund could also receive income from other dedicated sources, federal source or private grant funds or contributions.

(B) Local Funding

- (1) NRDs must provide matching funds of at least 20% for use of funds in the Water Resources Trust Fund to implement integrated management plans and implement tools utilized within plans.
- (2) Exempt NRD groundwater management activities from the statutory 2 ½ % budget lid placed on NRD budgets. The budget lid exemption is needed to allow NRDs to budget the necessary funds for matching contributions.
- (3) Authorize the NRDs to supplement the 4½ cent property tax levy authority with an additional levy authority of 1.8 cents imposed in groundwater management areas.

(C) Other

- (1) The Water Policy Task Force expects the Environmental Trust Fund to continue to prioritize and direct funding towards water management activities. The Environmental Trust Fund has prioritized funding of water activities in its grant program. Last grant year, roughly \$1 million in grants were awarded to funding of projects and activities related to water issues.

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- (2) The Task Force also recommends the Legislature consider funding current DNR programs through the Water Resources Trust Fund as well. Presently these programs are funded through general fund appropriations and amounted to roughly \$6.3 million in FY03. If current programs are included:
- (a) Dedicated funding needed would total \$11.1 million, or 1/20 of one cent of sales tax collected;
 - (b) At least 40% of annual receipts to the fund should be dedicated to funding interrelated water management activities identified above and up to 60% of the annual receipts be dedicated to fund existing programs like the Nebraska Resources Development Fund, Soil and Water Conservation Fund, and Small Watershed Fund.
 - (c) After 10 years, the percentages of annual receipts to the funds dedicated above should be at the discretion of the Natural Resources Commission.
 - (d) Local matching fund requirement for existing DNR programs should continue.

Annual Budget Detail of New Funding Package

	<u>State Contributions to Nebraska Water Trust Fund</u>	<u>Local Match Local Expenditures</u>
1. Interrelated Research/Data/ Planning/Implementation Data Gathering/Organizing COHYST Type Studies Local Specialized Studies Planning and Implementation	1,193,000	707,000
2. Tools in Integrated Management Plans Alternative Supplies Incentives/Payments Water Transfer Mechanisms	3,500,000	700,000
3. Discretionary/Other GW Mgmt. Funding⁽¹⁾	83,000	(1)
TOTAL	4,776,000	1,407,000⁽¹⁾

(1) No attempt was made to identify individual NRD expenditures already occurring in this category, but they are substantial. The budget amounts in the “*Discretionary/Other GW Mgmt. Funding*” category should be viewed as only a small portion of the total funding already going into these activities.

Report of Water Policy Task Force

VII. Additional Comments and Future Issues to be Addressed

The recommendations of the Water Policy Task Force are the result of a consensus-based decision-making process. A consensus is the strongest form a group decision can take, because it is a settlement or solution that all participants in the decision making process accept. The consensus by members of the Water Policy Force was built by identifying and exploring all parties' interests, and assembling a package agreement that satisfied these interests to the greatest extent possible.

Achieving consensus involved, but did not require, unanimous support by all Task Force members for all elements of the settlement. In its consensus decisions, some parties strongly endorsed particular solutions for issues while others accepted them as workable settlements or compromises. However, a strong consensus was reached on the total package.

During the deliberation and decision making process of the Water Policy Task Force, if a party could not agree to a specific solution for an issue or the total package, he or she had three options. They could stand aside on the issue in question and not block the consensus, support the consensus and request that their views be added in an addendum to the final document, or could block consensus and request that the group announce that there was no agreement. In the end each member of the Task Force had to decide whether the total package contained enough benefits to satisfy the interests of the State of Nebraska, the interest of their interest group and constituents, and their own personal interests for them to approve the package, notwithstanding some components that, although they could live with, were not to their liking.

At the end of discussions and deliberations of the Water Policy Task Force, a consensus was reached, and no one blocked the approval of the package.

In addition to the agreement package, participants in the Water Policy Task Force did want to have a section of the document where issues that need additional discussion and attention could be listed. Some of these issues were discussed by the Task Force and others were mainly mentioned as items that need further attention. Providing these comments, however, does not take away from the recommendation that the total proposed package be accepted by the Legislature without substantive amendments. If any one piece, including funding, is changed or deleted, this could change any given Task Force member's willingness to support the package and break apart the consensus that was achieved by the Task Force.

Report of Water Policy Task Force

COMMENTS

Comments by the Water Policy Task Force

Funding for the Legislation Developed by the Water Policy Task Force

This comment documents the consensus of the members of the Water Policy Task Force regarding funding to implement the provisions of the legislation. The legislation proposed herein is designed in part to provide a process to address conflicts between surface water users and groundwater users and prevent those conflicts from occurring in the future. This process uses a number of mechanisms that are included in the legislation but are dependent upon adequate and dedicated funding to achieve the above goals. Without this commitment, the Water Policy Task Force recommendations would not accomplish the legislature's goal to address inequities between surface water users and groundwater users and consensus and support for the legislation could not have been achieved. Therefore, a dedicated funding component should be viewed as an essential and integral part of the Water Policy Task Force recommended legislation as proposed.

Water Policy Task Force Members

Comments by Individual Task Force Members

The comments contained herein are those of the Task Force Member(s) identified and do not represent the views or signify agreement by the Task Force or any of its other members to the comments made.

Report of Water Policy Task Force

Comments from the City of Lincoln

There are no practical possibilities provided in law for any reallocation of water to urban interests.

- a. State law prohibits any permanent transfers between preferences. The Task Force proposals don't change that. While domestic uses have the highest priority or preference under the Nebraska Constitution, there does not appear to be any recognition those uses need realistic transfer options. Transfers from lower preferences to the highest preference will only be allowed on a temporary basis and then only under a very burdensome scenario. A municipality's need for water is never temporary in nature. It seems imprudent and not in the best interests of the majority of the citizens of the state to continue to prohibit such permanent transfers.
- b. The Task Force proposals require overly burdensome conditions upon temporary transfers to the domestic preference.
 - i. The conditions include a requirement that any land from which an appropriation is transferred may not have any reclassification to a lower valuation during the term of the temporary transfer, even if the subsequent use associated with that land would ordinarily result in a lower reclassification. This condition is not imposed on permanent transfers. This condition is imposed regardless of the length of time in which the appropriation is transferred. The temporary transfer could theoretically be continually renewed and go on indefinitely. This condition requires a community to support the tax base of other political subdivisions and may dramatically cause the lease cost to increase. No such requirement is imposed upon any other transaction in a community regardless of the potential impact to the community. In addition to the obvious financial impact, there is a recognition among various proponents that there is a legitimate question about the constitutionality of this condition.
 - ii. The proposals provide a new opportunity for objectors to attack the proposed transfers. Objections will now be allowed whenever the objectors perceived a potential impact to tax revenues or any potential economic impact within that county. This condition will require any applicant to expend more resources to negotiate with the objectors regardless of the legitimacy of their objections and regardless of whether they are parties to the proceeding. Allowing all these complaints to be heard will have the expected effect of slowing or halting the proceedings and certainly causing the proceedings to be more costly for the applicant.
 - iii. Due to the foregoing concerns, it is very unlikely that any municipality would undertake this gauntlet.

We recognize there are other beneficial aspects to the Task Force proposals and we support those. Adequate funding and an increase in staffing at the Department of Natural Resources will be absolutely required if the other proposals are to be successful.

Steven Huggenberger,
Municipal Task Force Representative

Report of Water Policy Task Force

Comments of a Republican River Basin Irrigator

The priority of the appropriations of the Republican River Basin water has never been protected from groundwater pumping for either meeting the States Compact Requirements or Surface Water Irrigation. There are now lakes and irrigation districts that will never have a water supply enough to irrigate again. A major share of the surface water irrigation in the Republican River and its Tributaries have been totally shut off over the last couple years. If the lakes don't fill some before planting time, a lot more areas will be without water. In the last two years because of the lack of surface water, groundwater wells in the surface water areas have declined or dried up totally. In drought situations Federal Crop Insurance has covered some of the cost. I am being told if the water is diverted to meet Compact requirements, there is no insurance coverage. In the drought years of the 30's, 50' and later dry periods there was more than an adequate water supply for the surface water areas and the pumping of the surface water areas groundwater wells.

Because of declining surface water flows, a major share of the Surface Water Irrigation has been progressively shut off over the last few years. There are now lakes that are questionable if they will ever fill enough again for any amount of irrigation. Without irrigation water, an irrigated farm loses its value, cannot generate enough income to cover its debt and cost. The owner and/or operator end up losing everything in a relative short period. This has already happened to owners and/or operators in a progressively increasing number as the canal system lose their water supply. Up to this point most of the formerly irrigated land has been kept on the tax roll and irrigation assessments being charged because of insurance and the probability of the NRD establishing water allotments. Without that tax valuation counties and schools will be in financial trouble along with all other entities.

In 2005 the impact of water curtailments to meet the requirements of the Kansas Nebraska and Colorado settlement will be placed upon **all** the basins irrigators. At the present time, because of the delays in the modeling, there has been no public notification for the amount of pumping restrictions that will be necessary to meet the compact and how that cut back will be administered. If the cutbacks are of an amount that will not allow production that will cover the expenses that the owner and/or operator has incurred for owning and operating irrigated land or they are place on certain groups of irrigators to get water to Kansas, the economics will be devastating to the basins farmers, businesses, counties, communities etc.

Claude L Cappel
Irrigator
McCook, Nebraska

Report of Water Policy Task Force

COMMENTS ON WATER POLICY TASK FORCE PROPOSED LEGISLATION

The following comments are provided with the understanding that support of the proposed legislation and associated report is conditioned according to the following comments. To the extent that the legislation or report is implemented or interpreted differently than as described in these comments, it should be assumed that consensus on the part of these Task Force members may be withheld.

We do not agree that this proposed legislation alters any of the protections extended to surface water appropriators, including, but not limited to the doctrine of prior appropriation, established by the Nebraska Constitution.

In addressing over-appropriated basins such as the Platte River, the obligation is to “identify the difference between the current over-appropriated state and a fully appropriated state of development in the basin and adopt an incremental approach to eliminate the difference”. This obligation to eliminate the difference is paramount. Funding limitations, political acceptance of necessary regulations, and conflicts with the goals of “economic viability, social and environmental health, safety and welfare of the basin” can not otherwise interfere with the obligation to “eliminate the difference” in water use. Only by eliminating the water use which interferes with the cyclical water supply available when the appropriation was granted -- providing compensation which addresses the loss in use of that water supply -- or providing an alternate water supply can senior appropriators’ rights be protected.

The report indicates that members “support the package being proposed because there are sufficient benefits for them in the package that outweigh any adverse aspects of the package.” However, agreement on the details of the package is conditional upon an expectation of the results from implementation. It is expected that enactment of the proposed legislation will provide the means to protect existing water supplies in basins that are not yet over-appropriated, and address the impact of lost water supplies, including return flows, to water users in basins that are over-appropriated. However, increased implementation costs or a lack of funding is not a legitimate excuse for failing to implement necessary integrated management plans and regulations. These Task Force members do not agree with and do not support the proposed legislation and this report if these anticipated benefits are not to be achieved, or if the report and legislation are to be used as a means of legal justification for permitting continued interference with senior appropriators by junior users.

We believe that sufficient funding is necessary in order for implementation activities to be effective. This process uses a number of mechanisms that are included in the legislation but will be dependent upon an adequate and dedicated funding package to achieve the above goals.

Report of Water Policy Task Force

Without this commitment, consensus could not have been achieved on the proposed legislation. Therefore, a dedicated funding component should be viewed as an integral part of the legislation and if funding were not available, the undersigned members would not have supported the legislation.

Don Kraus, Power
Tom Schwarz, Irrigators (Middle Platte)
Dennis Strauch, At-Large

Ken Schilz, Irrigators (South Platte)
Steve Huggenberger, Municipalities

Comments Presented Jointly by the Lower and Upper Elkhorn NRD'S

The following comments are intended to represent our opinions and are expressed as concerns for the future OF GROUND AND SURFACE WATER MANAGEMENT in our Basins. These comments are for the most part stated in the form of questions. The NRD's are very unsure about the outcome of actions that may result from new and revised legislation proposed by the Water Task Force.

- > How will "In stream Flow" fit into the water preference system ?
Presently there is no official recognition of this designation.
- > Will all other types of water rights with a post 1993 date assume "superior preference" status and eventually be required to compensate those downstream who may be harmed - either in money or water ?
- > Will those holding "Senior Water Rights" become "Junior" to In stream Flow and be required to provide compensation ?
- > Is it possible the Elkhorn Basin could be designated "Over- Appropriated" by default - in other words, water required to meet In stream Flow requirements in the Lower Platte system which partially originates in the Elkhorn Basin to compensate for the lack of flows from the Upper Platte system ?
- > Will the State require the Elkhorn Basin to provide groundwater to satisfy "In stream Flow" needs in time of shortage if an "Integrated Management System " is implemented in the future ?
- > How are municipal water needs (downstream in the Lower Platte) related to our existing "preference system" ?
- > In dry conditions a number of "Junior Domestic water rights" are now shut off. How will future needs be met if there is continued interference from the In stream Flow issue ? Is it possible that Junior users could plead some type of preference condition and pay some type of settlement rather than being shut off ?

Report of Water Policy Task Force

- > Portions of the Upper Elkhorn Basin contain huge areas of deeply saturated thickness in their aquifer - How will the State fairly determine "fully appropriated" status, if and when it becomes necessary to investigate groundwater conditions ?
- > Will sandpits and lagoons ever be considered for approved water storage permits ?

Cecilia Grevson
Irrigator

Richard Uhrenhlodt
Irrigator

Report of Water Policy Task Force

Table 1: Water Policy Task Force Membership

Natural Resources Districts

Ron Bishop **
Central Platte NRD
Grand Island

John Turnbull *
Upper Big Blue NRD
York

Jim Meismer
Twin Platte NRD
Paxton

Dan Smith
Middle Republican NRD
Curtis

Pete Rubin
Papio-Missouri River NRD
Bellevue

Power

Clint Johannes**
Nebraska Electric G&T
Columbus

Clayton Lukow
Southern Public Power District
Holstein

Don Kraus **
Central NE Public Power & Irrigation Dist.
Holdrege

Brian Barels
NE Public Power District
Columbus

Municipalities

Ted Cook
Lexington

Curt Friesen
Henderson

Norm Jackman
Omaha

Steve Huggenberger *
Lincoln

Gary Mader **
Grand Island

Agriculture

Galen Frenzen
Nebraska Cattlemen
Fullerton

Jay Rempe **
Nebraska Farm Bureau
Lincoln

Greg Whitmore *
Nebraska Corn Growers
Shelby

Recreation

James Coady *
McCook

Gloria Erickson **
Holdrege

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Environmental

Lorrie Benson *
Groundwater Foundation
Lincoln

Duane Hovorka
Nebraska Wildlife Federation
Elmwood

Dave Sands**
Lincoln

Paul Currier?
Whooping Crane Trust
Doniphan

At-Large

Jack Maddux *
Wauneta

Dennis Strauch
Mitchell

** Nelson Trambley
Campbell

Irrigators

(Republican)-Groundwater
Robert Ambrosek **
Haigler

(Republican)- Surface
Claude Cappel
McCook

(Republican)-Surface
Jim Miller *
Hardy

(North Platte)-55% Surface/45% Ground
Harry Howell *
Morrill

(North Platte)-Primarily Surface
LeRoy Pieper
Mitchell

(Middle Platte)-Groundwater
Dick Mercer
Kearney

(Middle Platte)-Groundwater
Tom Schwarz **
Bertrand

(Loup)-Surface
James Nelson
Boelus

(Elkhorn)-Groundwater
Cecilia Grevson and Stan Staab?
Madison

(Loup)-Both Ground/Surface
Allen Schmidt
Arcadia

**** Executive Committee Member**

? Passed away April 19, 2003

? Due to her husband's illness, Cecelia Grevson was not able to attend all the Task Force meetings. Stan Staab was a dedicated substitute in her absence.

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Irrigators (cont.)

(Elkhorn)-Groundwater
Richard Uhrenholdt
Elgin

(Big Blue)-Groundwater
Nancy Eberle *
Bradshaw

(Big Blue)-Groundwater
Gene Glock
Rising City

(Little Blue)-Groundwater
Lyle Heinrichs
Shickley

(South Platte)-Both Ground/Surface
Ken Schilz
Ogallala

(Lower Platte)-Mostly Groundwater
Lumir Jedlicka **
Schuyler

(Nemaha)-Groundwater
Kathy Wittler
Talmage

(Niobrara)-Groundwater
John Burke
Alliance

(White/Hat)-Surface
Robert Hawthorne
Chadron

(Missouri Tributaries)-Groundwater
Bryce Andersen
Dakota City

Department of Natural Resources

Roger Patterson **
Lincoln

Attorney General's Office

Dave Cookson **
Lincoln

Natural Resources Committee

Senator Ed Schrock **
Elm Creek

Senator Elaine Stuhr **
Bradshaw

Facilitators

Chris Moore
Jonathan Bartsch
CDR Associates
100 Arapahoe Avenue Suite 12
Boulder, CO 80302
(303) 442-7367

**** Executive Committee Member**

*** Executive Committee Alternate**

Report of Water Policy Task Force

Table 2: Executive Committee

Don Kraus	Ron Bishop	Jay Rempe
Gary Mader	Gloria Erickson	Dave Sands/Paul Currier
Robert Ambrosek	Dennis Strauch	Tom Schwarz
Lumir Jedlicka	Ed Schrock	Elaine Stuhr
Roger Patterson	Dave Cookson	

Report of Water Policy Task Force

Table 3: Task Force Sub-committee Membership

Data Sub-committee

John Turnbull Paul Currier

Surface Water Transfer Sub-committee

Frank Albrecht	Brian Barels	Larry Hutchinson	Steve Huggenberger
Don Kraus	Jim Nelson	Jay Rempe	Dave Sands
Tom Schwarz	Al Schmidt	Dennis Strauch	

Groundwater Transfer Sub-committee

Robert Ambrosek	Ron Bishop	Ron Cacek	Kent Miller
Mike Onnen	Butch Koehlous	Dan Smith	Dennis Schueth
John Turnbull			

Equities Sub-committee

Brian Barels	Ron Bishop	Claude Capple	Dave Cookson
Dean Edson	Lumir Jedlicka	Clint Johannes	Don Kraus
Clayton Lukow	Dick Mercer	Kent Miller	Roger Patterson
Jay Rempe	Dave Sands	Dennis Schueth	Tom Schwarz
Dennis Strauch	John Turnbull		

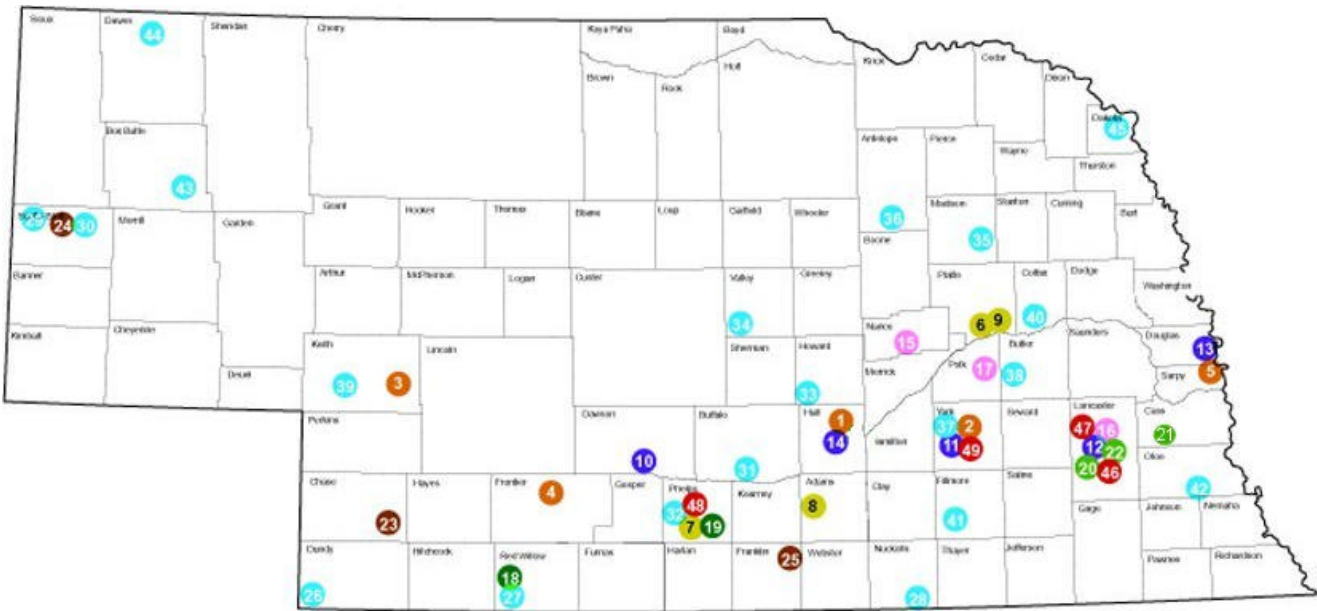
Funding Sub-committee

Art Brownlee	Ron Bishop	Gene Glock	Jody Gittins
Don Kraus	Jay Rempe	Ed Schrock	John Turnbull

Presentation Sub-committee

Robert Ambrosek	Ron Bishop	Jim Cook	Dave Cookson
Dean Edson	Roger Patterson	Jay Rempe	Dave Sands

Figure 1



- 12-10-03 Draft
Water Policy Task Force
Legislation to Codify
Recommended Process for Addressing Integrated Management
Of Groundwater and Surface Water
(Would Replace Section 46-656.28
And Sections 46-656.49 to 46-656.61)

Section 1. (1)(a) By January 1 of each year starting in 2006 and except as otherwise provided ~~in this act~~~~herein~~, the Department of Natural Resources shall complete an evaluation of the expected long-term availability of hydrologically connected water supplies for both existing and new surface water uses and existing and new groundwater uses in each of the state's river basins and shall issue a report that describes the results of that evaluation. For purposes of the evaluation and the report, a river basin may be divided into two or more sub-basins and/or reaches. ~~A Basin~~~~s~~, sub-basins ~~and~~ reaches for which an integrated management plan has been or is being developed pursuant to ~~Sections 53 through 448 of this act~~ shall not be ~~re~~-evaluated ~~unless it is being re-evaluated except~~ as provided in subsection (2) of this Section. For each basin, sub-basin or reach evaluated, the report shall describe (i) the extent and nature of use of both surface water and groundwater in each basin, sub-basin or reach; (ii) the geographic area within which the Department preliminarily considers surface water and groundwater to be hydrologically connected and the criteria used for that determination; and (iii) the extent to which the then current uses affect available near-term and long-term water supplies. Basins, sub-basins and reaches designated as over appropriated in accordance with subsection (4) of this section shall not be evaluated by the Department.

(b) Based on the information reviewed in the evaluation process, the Department shall arrive at a preliminary conclusion for each basin, sub-basin and reach ~~evaluated~~ as to whether that basin, sub-basin or reach presently is fully appropriated without the initiation of additional uses. The Department shall also determine if and how that preliminary conclusion would change if no additional legal constraints were imposed on future development of hydrologically connected surface water and groundwater and reasonable projections are made about the extent and location of future development in that basin, sub-basin or reach.

(c) In addition to its conclusion about whether a basin, sub-basin or reach is fully appropriated, the Department shall also include in its report prepared pursuant to Section 1(a), for information purposes only, a summary of relevant data provided by any interested party concerning the social, economic and environmental impacts of additional hydrologically connected surface water and ground water uses on resources that are dependent on streamflow or ground water levels, but are not protected by appropriations or regulations.

(d) In developing the annual reports required by this Section, the Department shall rely on the best scientific data and information readily available. When so requested, state agencies, Natural Resources Districts, irrigation Districts, municipalities, and other water

users and stakeholders shall provide the Department with relevant data and information in their possession. The Department shall specify by rule and regulation the types of scientific data and other information that will be considered for making the preliminary determinations required by this Section.

(2) The Department shall complete a re-evaluation of a basin, sub-basin or reach for which an integrated management plan has been or is being prepared if it has reason to believe that a re-evaluation might lead to a different determination about whether that basin, sub-basin or reach is fully or over appropriated. A decision to re-evaluate may be reached by the Department on its own or in response to a petition filed with the Department by any interested person. To be considered sufficient to justify a re-evaluation by the Department, any petition for re-evaluation must be accompanied by supporting information showing (a) that new scientific data or other information relevant to the determination of whether the basin, sub-basin or reach is fully or over appropriated has become available since the last evaluation of that basin, sub-basin or reach; (b) that the Department relied on incorrect or incomplete information when the basin, sub-basin or reach was last evaluated; or (c) that the Department erred in its interpretation or application of the information available when the basin, sub-basin or reach was last evaluated. If any petition for re-evaluation determined by the Department to be sufficient for the purposes of this subsection is filed before March 1 of any year, the re-evaluation of the basin, sub-basin or reach involved shall be included in the next annual report prepared in accordance with subsection Section (1) of this sectionAct. If any such petition is filed on or after March 1, the Department may defer the re-evaluation of the basin, sub-basin or reach involved until the second annual report after such filing.

~~(3) Within sixty days of the effective date of this Act, the Department shall designate those basins, sub-basins or reaches that are over-appropriated as defined in Section 1(5).~~

(43) For purposes of this Act, a river basin, sub-basin or reach shall be considered fully appropriated if it is determined that then existing uses of hydrologically connected surface water and groundwater in the basin, sub-basin or reach now cause or will cause in the reasonably foreseeable future (a) the surface water supply to be insufficient to sustain, long-term, the beneficial or useful purposes for which existing natural flow or; storage appropriations were granted and the beneficial or useful purposes s for which, at the time of approval, any existing instream appropriation, ~~at the time of the appropriation~~ was granted; (b) the streamflow to be insufficient to sustain, long-term, the beneficial uses from wells constructed in aquifers dependent on recharge from the river or stream involved; or (c) reductions in the flow of a river or stream sufficient to cause non-compliance by Nebraska with an interstate compact or decree, other formal state contract or agreement, or applicable state or federal laws.

~~(45)-(a)~~ For purposes of this Act, a basin, sub-basin or reach will be considered as over-appropriated if, on the effective date at the time of adoption of this Act, the basin, sub-basin or reach is subject to an interstate Cooperative Agreement between three or more states and, if prior to that effective date, the Department (a1) has declared a moratorium on the issuance of new granting surface water appropriationspermits in that basin, sub-basin or reach and (2b) ~~and~~ has requested that the each Natural Resources District with

jurisdiction in the affected area in that basin, sub-basin or reach either: (i) to close or to continue in effect a previously adopted closure of all or part of that District's portion of that basin, sub-basin or reach to the issuance of additional water well permits in accordance with subsection (1 (k) of previous section 46-656.25; or (ii) in the affected area adopt a to temporarily suspend or to continue in effect a previously adopted temporary suspension on the drilling of new water wells in all or part of that District's portion of that basin, sub-basin or reach.

(b) Within sixty days of the effective date of this Act, the Department shall designate those basins, sub-basins and reaches that it determines are over appropriated. The designation shall include a description of the geographic area within which the Department has determined that surface water and groundwater are hydrologically connected and the criteria used for that determination.

[was Sections 1 & 2; would be 46-656.10 under revision of GWMP Act]

Section 2. (1) Whenever the Department makes a preliminary determination that a basin, sub-basin or reach not previously designated as over appropriated and not previously determined to be fully appropriated is now fully appropriated ~~or designates a basin, sub-basin or reach as overappropriated pursuant to Section 1(3)~~, it shall place an immediate stay on the issuance by the Department of any new natural flow, storage or storage use appropriation in that basin, sub-basin or reach. It shall also provide prompt notice of that preliminary determination to all licensed water well contractors in the state and to each Natural Resources District that encompasses any of the geographic area involved. Immediately upon receipt of that notice there shall be a stay on issuance by the Natural Resources District of well construction permits in the geographic area preliminarily determined by the Department to include hydrologically connected surface water and groundwater in that basin, sub-basin or reach. The Department shall also notify the public of that preliminary determination of full appropriation and of the geographic area involved. Such notice shall be provided by publication once each week for three consecutive weeks in at least one newspaper with statewide circulation and in such other newspaper or newspapers as are deemed appropriate by the Department to provide general circulation in the basin, sub-basin, or reach.

(2) If, pursuant to this Section, the Department has determined a basin, sub-basin or reach is fully appropriated and has identified the existence of hydrologically connected surface water and groundwater in said basin, sub-basin or reach, there also shall be stays (a) on the construction of any new water well in the area covered by the Department's determination if for which such construction has not commenced prior to the Department's determination at date whether or not a construction permit for that well was previously obtained from the Department or from a Natural Resources District and (b) on the use of an existing water well or an existing surface water appropriation in the affected area to increase the number of acres historically irrigated. Such additional stays shall begin ten days after the first publication in a newspaper with statewide circulation of the notice of the Department's preliminary determination of full appropriation for that basin, sub-basin or reach. The stays imposed by this Section shall remain in effect until they are lifted pursuant to subsection 4 of this Section.

(3) Exceptions to the stays imposed by this Section will exist for (a) test holes; (b) dewatering wells with an intended use of one year or less; (c) monitoring wells; (d) wells constructed pursuant to a groundwater remediation plan pursuant to the Nebraska Environmental Protection Act; (e) water wells designed and constructed to pump fifty gallons per minute or less, provided that no two or more wells that each pump fifty gallons per minute or less may be connected or otherwise combined to serve a single project such that the collective pumping would exceed fifty gallons per minute; (f) water wells for range livestock; (g) new surface water uses or water wells that are necessary to alleviate an emergency situation involving the provision of water for human consumption or public health and safety; (h) water wells defined by the Natural Resources District involved as replacement water wells, provided that the consumptive use of any such replacement water well can be no greater than the historic consumptive use of the water well it is to replace; (i) new surface water uses and water wells to which a right or permit is transferred in accordance with state law, provided that the consumptive use of any such new use can be no greater than the historic consumptive use of the surface water use or water well from which the right or permit is being transferred; (j) water wells and increases in groundwater irrigated acres for which a variance is granted by the Natural Resources District involved for good cause shown; (k) surface water uses for which temporary public-use construction permits are issued pursuant to subsection (8) of Section 46-233 and (l) surface water uses and increases in surface water irrigated acres for which a variance is granted by the Department for good cause shown.

~~(4)~~

(4) Except as otherwise provided by this Section, any stay imposed in accordance with subsections (1) ~~and (2) - (3)~~ of this Section shall remain in effect for the affected ~~at~~ basin, sub-basin or reach ~~involved~~ until the Department has made a final determination about whether the basin, sub-basin or reach is fully appropriated and, if the Department's final determination is in the affirmative, shall remain in effect thereafter as provided in subsection (12) of this Section. until the Department and the Natural Resources District or Districts involved have decided, pursuant to this Section, whether the stays should be replaced with a temporary moratorium. Within ~~thethat~~ time period between the dates of the preliminary and final determinations, the Department and the Natural Resources District or Districts involved shall consult with any irrigation district or municipality that relies on water from the basin, sub-basin or reach involved and with other water users and stakeholders as deemed appropriate by the Department or by the Natural Resources District or Districts. The Department shall also hold one or more public hearings not more than 90 days after the first publication of the notice required by Section 2(1) of this Act. Notice of the hearing or hearings shall be provided in the same manner as the notice required by Section 46-656.340 of this Act. Any interested person may appear at such hearing or hearings and present written or oral testimony and evidence concerning the appropriation status of the basin, sub-basin or reach involved, the Department's preliminary conclusions about the extent of the area within which surface water and groundwater supply for that basin, sub-basin or reach is determined to be hydrologically connected, and whether ~~theany~~ stays on new uses should be ~~terminatedreplaced with a temporary moratorium on new surface water and/or new groundwater uses.~~

(55) Within 30 days after the hearing, if only one is held, or within 30 days after the final hearing, if more than one is held, the Department shall notify the Natural Resources District or Districts involved of its final determination concerning the appropriation status

of that basin, sub-basin or reach. If the final determination is that the basin, sub-basin or reach is fully appropriated, the Department at the same time shall (a) decide whether to continue or terminate~~replace~~ the stays on new surface water uses and on increases in the number of surface water irrigated acres ~~with a temporary moratorium on such uses or let the stay on such uses expire~~; and (b) delineate the geographic area within which the Department considers surface water and groundwater to be hydrologically connected in that basin, sub-basin or reach and describe the methods and criteria used in making that determination. If the Department terminates a stay, it shall provide notice of its decision to continue or terminate the stays thereof as provided in Section 40 of this act.

(66) If the Department's final determination is that the basin, sub-basin or reach is not fully appropriated, it shall provide notice thereof as provided in Section 40 of this Act, the stays imposed by Section 2 of this Act shall terminate immediately and no further action pursuant to this Section through Section 40 of this Act shall be required.

(77) Within ~~ninety~~45 days of a final determination by the Department that a basin, sub-basin or reach is fully appropriated, each an affected Natural Resources District ~~or Districts involved shall~~may hold one or more public hearings on the question of whether the stays on the issuance of new water well permits, on the construction of new water wells, ~~and~~ on increases in groundwater irrigated acres should be ~~terminated~~replaced with a temporary moratorium and, if so, over what geographic area. Notice of the hearing or hearings shall be provided pursuant to Section 46-656.40.

(88) Within ~~forth five~~45 days after a Natural Resources District's hearing pursuant to subsection (7) of this Section, if only one hearing is held, or within ~~forty five~~45 days of the final hearing, if more than one is held, the Natural Resources District shall decide (a) whether to ~~(a) terminate~~allow the stay on new water wells ~~to expire or replace it with a temporary moratorium, applicable in all or part of that District~~subject to that stay portion of the basin, sub-basin or reach delineated as including hydrologically connected surface water and groundwater by the Department, on the issuance of construction permits for new wells or, in areas where well permits are not required, on the construction of new wells; and (b) whether to terminateallow the stay on increases in groundwater irrigated acres ~~to expire or replace it with a temporary moratorium on such increases, applicable in all or part of that District~~s subject to the stay. portion of the basin, sub-basin or reach delineated as including hydrologically connected surface water and groundwater by the Department. If the District decides not to terminate the stay on new water wells in any geographic area, ~~impose a temporary moratorium on new water wells in all or part of the area subject to the stay, the District~~it shall also decide whether to exempt from that ~~stay~~temporary moratorium the construction of water wells for which permits were issued prior to issuance of the stay but for which construction had not commenced prior to that stay. If construction of water wells for which permits were issued prior to the stay is then allowed, all permits that were valid when the stay went into effect shall be extended by a time period equal to the length of the stay. ~~The kinds of water uses excepted from the stay pursuant to Section 2(3) of this Act also shall be excepted from the provisions of any temporary moratorium adopted in accordance with this Section.~~

(9) Whenever the Department designates a basin, sub-basin or reach as over appropriated, it shall continue in effect each previously declared moratorium on the issuance of new surface water appropriations in that basin, sub-basin or reach. It shall also provide prompt notice of that designation to all licensed water well contractors in the state and to each Natural Resources District that encompasses any of the geographic

area involved. Immediately upon receipt of that notice by a Natural Resources District there shall be a stay on the issuance of new water well construction permits in any portion of that District that is within the hydrologically connected area described by the Department. The Department shall also notify the public of its designation of that basin, sub-basin or reach as over appropriated and of the geographic area involved in that designation. Such notice shall be provided by publication once each week for three consecutive weeks in at least one newspaper with statewide circulation and in such other newspaper or newspapers as are deemed appropriate by the Department to provide general circulation in the basin, sub-basin or reach.

(10) Beginning ten days after the first publication in a statewide newspaper of a notice pursuant to subsection (9) of this Section, there also shall be stays (a) on the construction of any new water well in the hydrologically connected area if such construction has not commenced prior to that date and if no permit for construction of that well has been issued previously by either the Department or the Natural Resources District; (b) on the use of an existing water well in the hydrologically connected area to increase the number of acres historically irrigated; and (c) on the use, to increase the number of acres historically irrigated, of an existing surface water appropriation for which the point of diversion is in that basin, sub-basin or reach.

(11) Within ninety days following a Department designation of a basin, sub-basin or reach as over appropriated, a Natural Resources District that encompasses any of the hydrologically connected area described by the Department may hold one or more public hearings on the question of whether to terminate the stays on (a) the construction of new water wells within all or part of its portion of the hydrologically connected area; (b) the issuance of new water well construction permits in such area; or (c) the increase in ground water irrigated acres in such area. Notice of any hearing for that purpose should be provided pursuant to Section 10-1-10. Prior to the scheduling of a District hearing on the question of whether to terminate any such stay, the Department and the District involved shall consult with any irrigation district or municipality that relies on water from the basin, sub-basin or reach involved and with other water users and stakeholders as deemed appropriate by the Department or the Natural Resources District.

(129) Any ~~stay temporary moratorium issued~~ adopted in accordance with this Section 10-1-10 shall remain in effect until (a) ~~the stay has been terminated pursuant to subsection (5), (6), or (11) of this Section;~~ (b) an integrated management plan for the basin, sub-basin or reach involved has been adopted by the Department and the District or Districts involved and has taken effect; ~~(bc)~~ an integrated management plan for the basin, sub-basin or reach involved has been adopted by the Interrelated Water Review Board and has taken effect; or ~~(ed)~~ the Department, pursuant to subsection (2) of Section 1 of this Act, has completed a reevaluation and has determined that the basin, sub-basin or reach involved is not fully appropriated; provided that such ~~stay temporary moratorium~~ may be imposed initially for not to exceed three years following the Department's designation of the basin, sub-basin or reach as over appropriated or the Department's final determination that a basin, sub-basin or reach is fully appropriated and may be extended thereafter on an annual basis by agreement of the Department and the District involved the adopting entity for not to exceed two more years if necessary to allow the development, adoption and implementation of an integrated management plan in accordance with Sections 8 through 11 of this Act.

[was Sections 3 & 4; would be 46.656.11 under revision of GWMP Act]

Section 3. (1) Whenever the Department has designated a basin, sub-basin or reach as over appropriated or has made a final determination that a basin, sub-basin or reach is fully appropriated, the Natural Resources District or Districts encompassing that basin, sub-basin or reach and the Department shall jointly develop an integrated management plan for that basin, sub-basin or reach. Such plan is to be completed, adopted and take effect within three years of the Department's designation or final determination unless the Department and the District or Districts involved jointly agree to an extension of not to exceed two additional years.

(2) In developing an integrated management plan, the effects of existing and potential new water uses on existing surface water appropriators and groundwater users must be considered. An integrated management plan must include the following: (a) clear goals and objectives the purpose of which is to sustain a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the basin, sub-basin or reach can be achieved and maintained for both the near term and the long term; (b) a map clearly delineating the area subject to the integrated management plan; (c) one or more of the groundwater controls authorized for adoption by the Natural Resources Districts by Section 46-656. 25(36); and (d) one or more of the surface water controls authorized for adoption by the Department by Section 6 of this Act. The plan ~~may~~ also may provide for utilization of any applicable incentive programs authorized by law. Nothing in the integrated management plans for ~~in~~ a fully appropriated basin, sub-basin or reach shall require a District to regulate groundwater uses in place at the time of the Department's preliminary determination of full appropriation for that basin, sub-basin or reach under Section 1(1)(b) of this Act ~~but a unless the District may choose to~~ voluntarily adopt such regulation.

(3) The groundwater and surface water controls proposed for adoption in the plan pursuant to subsection (1) of this section must, when considered together, (a) be consistent with the goals and objectives of the plan; (b) be sufficient to ensure that the state will remain in compliance with applicable state and federal laws and with any applicable interstate water compact, decree, or other formal state contract or agreement pertaining to surface water or groundwater use or supplies; and (c) protect the groundwater users whose wells are dependent on recharge from the river or stream involved and the surface water appropriators on that river or stream from streamflow depletions caused by surface water uses and groundwater uses begun after the date the basin, sub-basin or reach was designated as over appropriated or preliminarily determined to be declared fully appropriated in accordance with Section 1 of this Act ~~2~~.

~~(4)(a) For purposes of this act a basin, sub-basin or reach may be over-appropriated as defined in this Act. This subsection shall apply only to those over-appropriated basins, sub-basins or reaches that are subject to an interstate Cooperative Agreement between three or more States on the effective date of this Act.~~

~~(b) For any basin, sub-basin or reach designated as over appropriated and subject to this subsection in which a Natural Resource District has not adopted a temporary moratorium, there shall be issued an immediate stay and further action on a temporary moratorium will be taken as provided for in Section 2 of this Act. (Make consistent with Sections 3, 4 and 14)~~

(~~ea~~) In any basin, sub-basin or reach ~~that is~~ designated as over-appropriated and ~~subject to this subsection~~ the ~~designated area lies at includes land area within~~ two or more Natural Resources Districts ~~encompassing that basin, sub-basin or reach~~, the Department and ~~the Natural Resources Districts involved~~ shall jointly develop, ~~using the consultation and collaboration process in Section 3(4)(d) and concurrent with the development of the integrated management plan~~, a basin-wide plan for the area designated as over-appropriated. ~~Such basin-wide plan shall be developed using the consultation and collaboration process described in subdivision (b) of this subsection, shall be developed concurrent with the development of the integrated management plan required by subsections (1), (2) and (3) of this Section, and shall be designed to achieve, in the incremental manner described in subdivision (d) of this subsection, the goals and objectives prescribed in Section 3(2)(a) of this Section.~~ The basin-wide plan shall be adopted after hearings before the Department and ~~the~~ Natural Resource Districts ~~involved~~. ~~The integrated management plans in areas governed by this subsection shall be consistent with any basin-wide plan developed pursuant to this subsection. (Access to IWRB).~~

(~~bd~~) In any basin, sub-basin or reach designated as over-appropriated and subject to this subsection, ~~and~~ the Department and each individual Natural Resources District encompassing that basin, sub-basin or reach shall jointly develop an integrated management plan for that basin, sub-basin or reach pursuant to ~~subsections (1) to -(3) of section 3 of this Act.~~ ~~Each integrated management plan for a basin, sub-basin or reaches governed by this subsection shall be consistent with any basin-wide plan developed pursuant to subdivision (a) of this subsection.~~ Such integrated management plan shall be developed after consultation and collaboration with interested irrigation districts, power districts, and municipalities within the affected area. In addition, the Department or ~~the~~ affected Natural Resources District(s) ~~or Districts~~ may include designated representatives of other affected stakeholders. If agreement is reached by ~~all parties involved in that consultation and collaboration process~~, the Department and each individual Natural Resources District(s) will adopt the agreed upon integrated management plan. If agreement cannot be reached ~~by all parties involved~~, the ~~integrated management plan will be developed and adopted by the~~ Department and ~~each individual~~ Natural Resources District ~~involved (s) will adopt an integrated management plan or by the Interrelated Water Review Board as provided in Sections~~ ~~to~~ ~~of this Act.~~

(~~ce~~) Any integrated management plan developed under this subsection shall identify the overall difference between the current and fully appropriated ~~levels states~~ of development. This determination shall take into account cyclical supply, including drought, identify the portion of ~~the overall~~ difference that is due to conservation measures, ~~and~~ identify the ~~portion of the overall difference that is due to depletions to stream flow from~~ water use initiated prior to ~~July 1, 1997 the date used in subdivision section (cf) of this subsection.~~ ~~Section 3(4) of this Act, and shall be developed using the same process as set forth in Section 1(a)(i)-(iii) of this Act.~~

(~~df~~) Any integrated management plan developed under this subsection shall adopt an incremental approach to achieve the goals and objectives identified under ~~subdivision (a) of subsection (2) of Section 3(2)(a) of this Act~~ using the following steps:

- (i) the first increment goal~~s~~ shall be to address the impacts of stream flow depletions to (A) surface water ~~appropriations rights~~ and (B) wells constructed

in aquifers dependent on recharge from stream flow, to the extent those depletions are caused by water use begun after July 1, 1997, and, unless an interstate Cooperative Agreement for that basin, sub-basin or reach is no longer in effect, -or- to prevent stream flow depletions that which would cause non-compliance by Nebraska with that an-interstate Cooperative Agreement compact or decree or other formal state contract or agreement entered into no earlier than July 1, 1997. During the first increment, the dDepartment and the affected Natural Resources District or Districts will also pursue voluntary efforts, subject to the availability of funds, to offset any increase in stream flow depletive effects that occurs commence after July 1, 1997 but is are caused fromby groundwater uses initiated prior to that July 1, 1997, but which occur after such date. The Department and the affected Natural Resources District or Districts -also may use other appropriate and authorized measures for that purpose -to offset any stream flow depletive effects from groundwater uses initiated prior to July 1, 1997;

~~(ii)~~ (ii) an integrated management plan adopted under this section shall be completed, adopted and take effect within three years of the designation of the basin as over-appropriated unless the Department and the affected Natural Resource Districts jointly agree to an extension not to exceed two additional years;

~~(iii)~~ (ii) The Department and affected Natural Resource District may make amendments to the an integrated management plan subject to this subdivision as necessary based on an annual review of the e-integrated management plan's progress being made towardin achieving the increment goals for that increment;

~~(iv)~~ (iii) During the ten Within 40-years after adoption of an integrated management plan under this subdivisionsection, or during the ten within10 years after the adoption of any subsequent increments of the ate integrated management plan, the Department and affected Natural Resources District shall conduct a technical analysis of the actions taken in the ate increment to determine the progress towards meeting the goals and objectives adopted in Section 3(2)(a). Included in the analysis will be an examination of: (a) available supplies and changes in long-term availability; (b) the effects of conservation practices and natural causes, including but not limited to drought; and (c) the effects of the plan on reducing the overall difference identified in Section 3(4)(e). The analysis shall determine if a subsequent increment is necessary in the integrated management plan to meet the goals and objectives adopted in Section 3(2)(a) and reduce the overall difference between the current and fully appropriated status identified in subsection (4)(ce).

~~(v)~~ (iv) Based on the determination made in subdivision section-(df)(~~iii~~iv), the Department and affected Natural Resources Districts, using the consultative and collaborative process outlined in Section 3(4)(d), will, if necessary, identify goals for a subsequent increment of the integrated management plan. Subsequent increments shall be completed, adopted and take effect no longer than ten10-years after adoption of the previous increment; and

~~(vi)~~ (v) if necessary, steps (ii) through (iv) shall be repeated until the Department and affected Natural Resources Districts agree the goals and objectives identified in accordance with Section 3(2)(a) have been met and the overall

difference identified in subsection (4)(ce) has been addressed such that the basin, sub-basin or reach has returned to a fully appropriated state.

[was Section 5; would be 46.656.12 under revision of GWMP Act]

Section 4. (1) The surface water controls that may be included in an integrated management plan and may be adopted by the Department are: (a) increased monitoring and enforcement of surface water diversion rates and amounts diverted annually; (b) the prohibition or limitation of additional surface water appropriations; (c) requirements for surface water appropriators to apply or utilize reasonable conservation measures consistent with good husbandry and other requirements of Section 46-231 and consistent with reasonable reliance by other surface water or groundwater users on return flows or on seepage to the aquifer; and (d) other reasonable restrictions on surface water use that are consistent with the intent of Section 46-656.035 and the requirements of Section 46-231. (2) If during the development of the integrated management plan the Department determines that surface water appropriators should be required to apply or utilize conservation measures, or that other reasonable restrictions on surface water use need to be imposed, the Department's portion of the integrated management plan shall allow the affected surface water appropriators and surface water project sponsors a reasonable amount of time, not to exceed 180 days unless extended by the Department, to identify the conservation measures to be applied or utilized, to develop a schedule for such application and utilization, and to comment on any such other proposed restrictions

[was Section 6; would be 46.656.13 under revision of GWMP Act]

Section 5. (1) In developing an integrated management plan the Department and the Natural Resources District or Districts involved shall utilize the best scientific data and other information available and shall review and consider any rules and regulations in effect in any then existing groundwater management area that encompasses all or part of the geographic area to be encompassed by the plan. Consideration shall be given to the applicable scientific data and other information relied upon by the Department in preparing the annual report required by Section 1 of this Act and to other types of data and information that may be deemed appropriate by the Department. The Department, after seeking input from the Natural Resources Districts, shall specify by rule and regulation the types of scientific data and other information that will be considered in developing an integrated management plan. The Natural Resources Districts shall adopt similar rules and regulations specifying the types of scientific data and other information necessary for purposes of this Section. Existing research, data, studies, or any other relevant information, which has been compiled by or is in the possession of other state or federal agencies, other Natural Resources Districts and other political subdivisions within the state shall be utilized. State agencies and political subdivisions shall furnish information or data upon the request of the Department or any involved District. Neither the Department nor the District or Districts shall be required to conduct new research or to develop new computer models to prepare an integrated management plan, but such new research may be conducted or new computer models may be developed within the limits of available funding if the additional information to be produced by that research or model is desired by the Department and the District or Districts involved.

(2) During preparation of an integrated management plan for a fully appropriated basin, sub-basin or reach, the Department and the District or Districts involved shall consult with any irrigation District or municipality that relies on water from the basin, sub-basin or reach involved and with other water users and stakeholders as deemed appropriate by the Department or by the Natural Resources District or Districts involved. They also shall actively solicit public comments and opinions through public meetings and other means.

[was Section 7; would be 46.656.14 under revision of GWMP Act]

Section 6. (1) If the Department and the District or Districts involved reach agreement on (a) the proposed goals and objectives of the integrated management plan for the basin, sub-basin or reach involved; (b) the proposed geographic area to be subject to controls; and (c) the surface water and groundwater controls and any incentive programs that are proposed for adoption and implementation in that basin, sub-basin or reach, they shall schedule one or more public hearings to take testimony on the proposed plan and the proposed controls. Such hearing or hearings shall be held within forty-five days of the agreement and within or in reasonable proximity to the area to be affected by implementation of the plan. Notice of the hearing or hearings shall be published pursuant to Section 46-656.40. The costs of publishing the notice shall be shared between the Department and the District or Districts involved. All interested persons may appear at the hearing or hearings and present testimony or provide other evidence relevant to the issues being considered.

(2) Within 60 days after the hearing or hearings, the Department and the District or Districts involved shall jointly decide whether to implement the plan proposed, with or without modifications, and whether to adopt the surface water and groundwater controls proposed in the plan. If the Department and the District or Districts agree to implement the plan and to adopt and implement the controls proposed, the District or Districts shall by order designate a ground water management area for integrated management or, if the geographic area subject to the plan is already in a management area, the order shall designate an integrated management subarea for that management area. The District's order shall include a geographic and stratigraphic definition of the area or subarea involved and shall adopt the control or controls and any incentive programs in the plan that are authorized for adoption by the District by Section 46-656. 25(36). The Department shall by order adopt the control or controls in the plan that are authorized for adoption by the Department by Section 4 of this Act. Neither the controls adopted by the District nor those adopted by the Department shall include controls substantially different from those set forth in the notice of the hearing. The area designated as a management area or subarea by the District shall not include any area that was not identified in the notice of the hearing as within the area proposed to be subject to the controls in the plan.

The Department and the District shall each cause a copy of its order to be published in the manner provided in Section 46-656.41.

(3) If at any time during the development of a basin wide plan or an the integrated management plan either the Department or the District or Districts involved conclude that the parties are not going to be able to reach a timely agreement on the basin wide plan or on (a) the goals and objectives of the integrated management plan for the basin, sub-basin or reach involved; (b) the geographic area to be subject to controls; or (c) the surface water or groundwater controls or any incentive programs to be proposed for

adoption and implementation in that basin, sub-basin or reach, that party may initiate a non-binding alternative dispute resolution process by submitting a description of the disputed issues in writing to the Governor. Such an alternative dispute resolution shall be initiated by the Department if agreement on the proposed plan has not been reached by 270 days prior to the deadline established in accordance with [subsection \(1\)](#) of this section for the plan to become effective. Regardless of how the alternative dispute resolution process is initiated, any party other than the initiating party may, within ten days of the initiation of the process, submit to the Governor in writing any additional issue or issues considered by that party to be in dispute. The Governor shall select the mediator and shall arrange for the participation in the mediation process of at least one additional person who is familiar with the relevant scientific and policy issues but is not otherwise involved directly or indirectly in the dispute. The mediation process shall be convened within thirty days of the last written submission of issues and shall last no longer than ninety days unless extended by mutual agreement of the parties. The Department and the District or Districts involved shall share the costs of the mediation process.

If the differences between the Department and the District or Districts involved are resolved through the mediation process, the integrated management plan shall be completed and the process for considering its adoption and implementation shall continue as provided in [Section 6\(1\) of this Act](#).

[was Section 8-9; would be 46.656.15 under revision of GWMP Act]

Section 7. (1) There is hereby created, for the purposes specified in subsections 2, 3, and 4 of this Section, a five member Interrelated Water Review Board. The board shall not be permanent in nature but, when appointed and convened, shall continue to exist only until it has resolved a dispute referred to it in accordance with [Section 11, 12, or 13](#) of this Act. The Governor shall appoint and convene the Interrelated Water Review Board within 45 days of being notified of the need therefore. The board shall be chaired by the Governor or by a person who is designated as chairperson by the Governor and who is knowledgeable concerning surface water and groundwater issues. The Governor shall appoint one additional member of his or her own choosing and shall appoint the other three members from a list of no less than six nominees provided by the Natural Resources Commission within twenty days of the Governor's request for such list of nominees. No more than two members may reside in the geographic area involved in the appeal or dispute. An individual shall not be eligible for membership on the board if the decisions to be made by the board would or could cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she is associated, unless such benefit or detriment is indistinguishable from the effects of such action on the public generally or a broad segment of the public. The board shall be subject to the provisions of the Sections 84-1408 through 84-1414. For purposes of [Sections 11 and 12](#) of this Act, action may be taken by a vote of three of the board's five members. For purposes of [Section 13](#) of this Act, action may be taken only by a vote of at least four of the board's five members.

(2)(a) If the Department and the District or Districts involved cannot resolve disputes over the content of [a basin wide plan or](#) an integrated management plan by utilizing the mediation process described in [Section 6\(2\)](#) of this Act, the Governor shall be notified and the dispute shall be submitted to the Interrelated Water Review Board. When the board has been appointed and convened [to resolve disputes over a basin wide plan the](#)

Department and the District or Districts involved shall each present to the board that party's proposed basin wide plan. When the board has been appointed and convened to resolve disputes over an integrated management plan, the Department and the District or Districts involved shall each present to the board that party's (i) proposed goals and objectives for the integrated management plan; (ii) proposed geographic area to be subject to controls; and (iii) proposed surface water and groundwater controls and any proposed incentive program for adoption and implementation in the basin, sub-basin or reach involved. Each party also shall be given adequate opportunity to comment on the proposals made by the other party or parties.

(b) When the Interrelated Water Review Board concludes that the disputed issues have been fully aired by the parties, which shall be not more than 45 days after the board is first convened, the board shall select those proposals or portions of proposals that it will consider for adoption and shall schedule a public hearing or hearings to take testimony on the proposal or proposals selected. Such hearing or hearings shall be held within forty-five days of the Interrelated Water Review Board's selection of proposals to consider for adoption and shall be within or in reasonable proximity to the area that would be affected by implementation of any of the proposals to be considered at the hearing. The notice of the hearing or hearings shall include the information required for notices published pursuant to Section 8 of this Act and shall be published in the manner required by that Section. The costs of publishing the notice shall be shared by the Department and the District or Districts involved. All interested persons may appear at the hearing or hearings and present testimony or provide other evidence relevant to the issues being considered.

(c) Within 45 days after the hearing or hearings, the Interrelated Water Review Board shall by order, as applicable, adopt a basin wide plan or an integrated management plan for the basin, sub-basin or reach involved and, in the case of an integrated management plan, shall designate a ground water management area for integrated management or an integrated management subarea for that basin, sub-basin or reach. An Such integrated management plan must be consistent with subsection (2) of Section 3 of this Act and the groundwater and surface water controls and any incentive programs that are adopted as part of that plan must be consistent with subsection (3) of Section 3 of this Act. None of the controls adopted by the board shall be substantially different from those set forth in the notice of the hearing. The area designated as a management area or subarea shall not include any area that was not identified in the notice of the hearing as within the area proposed to be subject to the controls in the plan.

(d) The board's order shall be published in the manner required by Section 46-656.41.

(e) Surface water controls adopted by the board shall be implemented and enforced by the Department the same as if they had been adopted by the Department. Groundwater controls adopted by the board shall be implemented and enforced by the District or Districts involved the same as if they had been adopted by the District or Districts.

(3) Regardless of whether an integrated management plan was adopted pursuant to Section 6 of this Act or by the Interrelated Water Review Board pursuant to subsection 2 of this Section, the Department or a Natural Resources District responsible in part for implementation and enforcement of an integrated management plan may propose modification of the goals or objectives of that plan, of the area subject to the plan, or of the surface water controls, ~~or~~ groundwater controls or incentive programs that were

adopted to implement that plan. The Department and the District or Districts involved shall utilize the procedures in Sections 3 through 6 of this Act in an attempt to reach agreement on and to adopt and implement proposed modifications. If agreement on such modifications cannot be achieved utilizing those procedures, either the Department or a District involved may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with subsection (1) of this Section to resolve the dispute and, if applicable, to adopt any modifications utilizing the procedures in subsection (2) of this Section.

(4) The Department and the District or Districts involved also may raise objections concerning the implementation or enforcement, by one or more of the other parties, of a previously adopted surface water or groundwater control or controls. The Department and the District or Districts involved shall utilize the procedures in Sections 3 through 6 of this Act in an attempt to reach agreement on such implementation or enforcement issues. If agreement on such issues cannot be achieved utilizing those procedures, either the Department or a District may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with Section 10 of this Act. After allowing each party full opportunity to express its reasons for its position on the issue at hand, the board may either take no action or it may (1) conclude that one or more parties needs to modify its approach to implementation or enforcement and direct that such modifications take place; or (2) conclude that one or more parties either has not made a good faith effort to implement or enforce the portion of the plan or controls for which it is responsible or is unable to fully implement and enforce that portion and that such party's jurisdiction relative to implementation and enforcement of the plan and any applicable controls shall be terminated and be reassigned to one or more of the other parties responsible for implementation and enforcement. A decision by the board to terminate and reassign jurisdiction of any portion of the plan or controls shall take effect immediately upon that decision. Notice of such reassignment shall be published at least once in such newspaper or newspapers as are necessary to provide general circulation in the area affected by that reassignment.

The board may be reconvened in accordance with Section 10 of this Act at a later date upon request to the Governor by the party for which jurisdiction for implementation and enforcement was terminated if such party desires to have its jurisdiction reinstated, but no such request shall be honored until at least one year after the termination nor more often than once per year thereafter. The board may reinstate jurisdiction to that party only upon a clear showing by that party that it is then willing and able to fully implement and enforce the plan and any applicable controls. Notice that a party's jurisdiction has been reinstated shall be provided in the same manner that notice of the earlier termination was given.

[was Section 10-13; would be 46.656.16 under revision of GWMP Act]

Section 8. (1) Prior to the effective date of this Act, actions have been taken by the Department and by one or more Natural Resources Districts pursuant to previous Section 46-656.28. Those actions were taken for the purpose of addressing circumstances that are hereafter to be addressed in accordance with Sections 1 through 7 of this Act. It is the legislature's intent that actions taken pursuant to Section 46-656.28 prior to the repeal of that Section should not be negated and that transition from the authorities and responsibilities granted by Section 46-656.28 to those granted by

Sections 1 through 7 of this Act should occur in as efficient a manner as possible. It is provided therefore that such transition shall be governed by subsections (2) through (5) of this Section. For the purposes of this Section, all references to Section 46-656.28 shall be to Section 46-656.28 as it existed immediately prior to being repealed by this Act.

(2) If prior to the effective date of this Act (a) a Natural Resources District has made a request pursuant to subsection (1) of ~~previous~~ Section 46-656.28 that affected appropriators, affected surface water project sponsors and the Department consult and that studies and that a hearing be held, but (b) the director has not made a preliminary determination relative to that request pursuant to subsection (2) of that Section, no further action on the District's request shall be required by the Department. ~~However, if~~ under the same circumstances a temporary suspension in the drilling of certain wells has been imposed by the District pursuant to subsection (16) of Section 46-656.28 and remains in effect immediately prior to this Act taking effect, such temporary suspension shall remain in effect for thirty days after the Department has issued its first annual report pursuant to Section 1 of this Act, except that to the extent any such temporary suspension is in effect for all or part of a hydrologically connected area for a basin, sub-basin or reach designated as over appropriated by the Department, such temporary suspension shall remain in effect only until it is superceded by the stays imposed pursuant to subsections (9) and (10) of Section 2 of this Act. To the extent that any such temporary suspension applies to a geographic area preliminarily considered by the Department to have groundwater hydrologically connected to the surface water of a fully appropriated basin, sub-basin or reach, such temporary suspension shall be superceded by the stays imposed pursuant to **Section 2** of this Act.

(3) If prior to the effective date of this Act (a) the director has made a preliminary determination pursuant to subsection (2) of Section 46-656.28 that there is reason to believe that the use of hydrologically connected groundwater and surface water in a specific geographic area is contributing to or is in the reasonably foreseeable future likely to contribute to any of the types of conflicts, disputes or difficulties listed in that subsection; (b) the director has not made a determination pursuant to subsection (4) of Section 46-656.28 that a joint action plan should not be prepared, but (c) preparation of a joint action plan pursuant to subsections (5) through (9) of that Section has not been completed, the geographic area involved shall become subject to Sections **2 through 7** of this Act immediately on the effective date of this Act and the Department will not need to evaluate such geographic area in its first annual report issued pursuant to Section 1 of this Act. For the purposes of this subsection and **Sections 2 and 3** of this Act and except as provided below, (a) the effective date of this Act shall result in the imposition in any geographic area subject to this subsection of the stays required by **Section 2**; (b) such stays shall be imposed in the manner required by that Section; and (c) the effective date of this Act shall be treated as though it were the date of a Departmental preliminary determination pursuant to Section 1 of this Act that such area is a geographic area within which groundwater and surface water of a fully appropriated basin, sub-basin or reach are hydrologically connected. -If, prior to the effective date of this Act, the director has held a hearing on a report issued pursuant to subsection (3) of Section 46-656.28 but has not yet determined whether a joint action plan should be prepared, no Departmental hearing shall be required pursuant to Section 2 of this Act before a final determination is made about whether the basin, sub-basin or reach involved is fully appropriated. If, prior to the effective date of this Act, the director has determined pursuant to subsection (4) of Section 46-656.28 that a joint action plan should be prepared, that determination shall

have the same effect as a final Departmental determination, pursuant to **Section 4** of this Act, that the basin, sub-basin or reach involved is fully appropriated and no separate determination to that effect shall be required. If, after the effective date of this Act, the Department determines that all or part of the area subject to this subsection is in an over appropriated basin, sub-basin or reach, that portion of the area thereafter shall be subject to the provisions of this Act applicable to over appropriated basins, sub-basins, and reaches and stays that have previously taken effect in accordance with this subsection shall continue in effect as stays for an over appropriated basin, sub-basin or reach without additional action or publication of notice by the Department. - Any temporary suspension in the drilling of certain wells that has been imposed in the geographic area involved by a Natural Resources District pursuant to subsection (16) of Section 46-656.28 prior to the effective date of this Act shall remain in effect until for thirty days after the effective date of this Act but shall thereafter be superceded by the stays imposed pursuant to by **Section 2** of this Act.

(4) If prior to the effective date of this Act preparation of a joint action plan has been completed pursuant to subsections (5) through (9) of Section 46-656.28 but has not yet been adopted pursuant to subsection (11) of that Section, the Department will not need to evaluate the geographic area involved in its first annual report issued pursuant to Section 1 of this Act. The Department and the District involved shall review the completed joint action plan for its conformance with **Sections 3, 4 and 5 of this Act**. If the joint action plan is determined to be in conformance with **Sections 3, 4, and 5** or if agreement is reached on the revisions necessary to bring it into such conformance, the Department and the District shall proceed to adopt the plan and implement the controls as provided in **Section 6** of this Act. If the joint action plan is determined to be in nonconformance with **Sections 3, 4 and 5** of this Act and agreement on the proposed plan or the proposed controls cannot be reached pursuant to **Section 6** of this Act, **Sections 6 through 7** of this Act shall apply. Except to the extent that any portion of the area involved is designated as all or part of an over appropriated basin, sub-basin or reach, Any temporary suspension in the drilling of certain wells that has been imposed in the geographic area involved by a Natural Resources District pursuant to subsection (16) of Section 46-656.28 shall remain in effect until (a) the Department and the District have jointly decided to implement the plan, with or without modifications, and controls have been adopted and have taken effect; or (b) the Interrelated Water Review Board, pursuant to **Section 7** of this Act, has adopted an integrated management plan for the basin, sub-basin or reach involved and the controls adopted by the board have taken effect. To the extent that any portion of the area involved is designated as all or part of an over appropriated basin, sub-basin or reach, any temporary suspension in the drilling of wells shall be superceded by the stays imposed pursuant to subsections (9) and (10) of section 2 of this Act.

(5) If, prior to the effective date of this Act, a joint action plan has been adopted and implemented pursuant to subsections (10) through (12) of Section 46-656.28 and is in effect immediately prior to this Act taking effect, the Department will not need to evaluate the geographic area subject to that plan in its first annual report issued pursuant to Section 1 of this Act. That plan shall, for purposes of this Act, be considered an integrated management plan and thereafter shall be subject to the provisions of Sections 7 of this Act.

[was Section 14; would be 46.656.17 under revision of GWMP Act]

(1) Acre-inch shall mean the amount of water necessary to cover an acre of land one inch deep;

(2) Allocation shall mean the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time;

(3) Beneficial use shall mean that use by which water may be put to use to the benefit of humans or other species.

(4) Best management practices shall mean schedules of activities, maintenance procedures, and other management practices utilized to prevent or reduce present and future contamination of ground water which may include irrigation scheduling, proper rate and timing of fertilizer application, and other fertilizer and pesticide management programs. In determining the rate of fertilizer application, the district shall consult with the University of Nebraska or a certified crop advisor certified by the American Society of Agronomy;

(5) Board shall mean the board of directors of a district;

(6) Consumptive use shall mean for purposes of this Act, the amount of water that is consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use is lawfully made

(7) Contamination or contamination of ground water shall mean nitrate nitrogen or other material which enters the ground water due to action of any person and causes degradation of the quality of ground water sufficient to make such ground water unsuitable for present or reasonably foreseeable beneficial uses;

(8) Dewatering wells shall mean a well constructed and used solely for the purpose of lowering the groundwater table elevation.

(9) District shall mean a natural resources district operating pursuant to Chapter 2, article 32;

(10) Emergency situation shall mean any set of circumstances that require use of water from any source that might be otherwise regulated or prohibited and the agency, district or organization responsible for regulating water use from that source has a reasonable and good faith belief that such use is necessary to protect the public health, safety and welfare.

(11) Good cause shown shall mean a reasonable justification for granting a variance to consumptively use water that would otherwise be prohibited by law, statute, rule or regulation and which the granting agency, district or organization reasonably and in good faith believes will provide an economic, environmental, social or public health and safety benefit that is equal to or greater than the benefit resulting from the prohibition from which a variance is sought.

(12) Ground water reservoir life goal shall mean the finite or infinite period of time which a district establishes as its goal for maintenance of the supply and quality of water in a ground water reservoir at the time a ground water management plan is adopted;

(13) Ground water shall mean that water which occurs in or moves, seeps, filters, or percolates through ground under the surface of the land;

(14) Historic consumptive use shall mean the amount of water that has previously been consumed under appropriate and reasonably efficient practices to accomplish

without waste the purposes for which the appropriation or other legally permitted use was lawfully made

(15) Illegal water well shall mean (a) any water well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection Act, (b) any water well not in compliance with rules and regulations adopted and promulgated pursuant to the act, (c) any water well not properly registered in accordance with sections 46-602 to 46-604, or (d) any water well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws;

(16) Interested for purposes of [section ___](#), and except for [section 46-656. ___](#) as it pertains to cease and desist orders, shall mean a party, person or organization is interested if they are provided notice of the commencement of a process to develop a basin wide plan for an area designated as over-appropriated and said party, person or organization has affirmatively responded that they wish to participate in the process to the governing body or agency providing notice.

(17) Irrigated acre shall mean any acre that is certified as such pursuant to rules and regulations of the district and that is actually capable of being supplied water through irrigation works, mechanisms, or facilities existing at the time of the allocation;

(18) Management area shall mean any area so designated by a district pursuant to section 46-656.09, by the Director of Environmental Quality pursuant to section 46-656.16, or by a district and the department pursuant to section 46-656.10. Management area shall include a control area or a special ground water quality protection area designated prior to July 19, 1996;

(19) Management plan shall mean a ground water management plan developed by a district and submitted to the Director of Natural Resources for review pursuant to sections 46-656.12 to 46-656.15;

(20) Monitoring wells shall mean a water well that is designed and constructed to provide ongoing hydrologic and/or water quality information and is not intended to be used for a consumptive use.

(21) Order for purposes of this act, except as otherwise specifically provided herein, shall include any order required by the act, rule and regulation or other decision adopted by a district by vote of the board of directors of said district taken at any regularly or specially scheduled meeting of the board.

(22) Overall difference or overall difference between the current and fully appropriated levels of development shall mean the extent to which existing uses of hydrologically connected surface water and groundwater and conservation activities results in the water supply available for the purposes identified in subsection (3) of section 1 of this Act to be less than the water supply available if the basin, sub-basin or reach had been determined fully appropriated in accordance with this Act.

(23) Person shall mean a natural person, a partnership, a limited liability company, an association, a corporation, a municipality, an irrigation district, an agency or a political subdivision of the state, or a department, an agency, or a bureau of the United States;

(24) Point source shall mean any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, other floating craft, or other conveyance, over which the

Department of Environmental Quality has regulatory authority and from which a substance which can cause or contribute to contamination of ground water is or may be discharged;

(25) Rotation shall mean a recurring series of use and nonuse of irrigation wells on an hourly, daily, weekly, monthly, or yearly basis;

(26) Subirrigation or subirrigated land shall mean the natural occurrence of a ground water table within the root zone of agricultural vegetation, not exceeding ten feet below the surface of the ground;

(27) Sustainable use shall mean a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the basin, sub-basin or reach can be achieved and maintained for both the near term and the long term; normal conditions amount available meets amount needed.

(28) Surface water project sponsor shall mean an irrigation district created pursuant to Chapter 46, article 1, a reclamation district created pursuant to Chapter 46, article 5, or a public power and irrigation district created pursuant to Chapter 70, article 6; and

(29) Test holes shall mean a hole designed solely for the purposes of obtaining information on hydrologic and/or geologic conditions

(30) To commence construction of a water well shall mean the beginning of the boring, drilling, jetting, digging, or excavating of the actual water well from which ground water is to be withdrawn;

(31) Variance shall mean the approval to act in a manner contrary to existing rule or regulation from a governing body whose rule or regulation is otherwise applicable.

(32) Water well shall have the same meaning as in section 46-601.01;

Section 46-656.25

46-656.25

Management area; controls authorized; procedure.

(1) A district in which a management area has been designated shall by order adopt one or more of the following controls for the management area:

(a) It may allocate the amount of ground water that may be withdrawn by ground water users; determine the permissible total withdrawal of ground water for each day, month, or year and allocate such withdrawal among the ground water users;

(b) It may adopt a system of rotation for use of ground water;

(c) It may adopt well-spacing requirements more restrictive than those found in sections 46-609 and 46-651;

(d) It may require the installation of devices for measuring ground water withdrawals from water wells;

(e) It may adopt a system which requires reduction of irrigated acres pursuant to subsection (2) of section 46-656.26;

(f) It may limit or prevent the expansion of irrigated acres or otherwise limit or prevent increases in the consumptive use of ground water withdrawals from water wells used for irrigation or other beneficial purposes;

(g) It may require the use of best management practices;

(h) It may require the analysis of water or deep soils for fertilizer and chemical content;

(i) It may impose~~provide~~ educational requirements, including mandatory educational requirements, designed to protect water quality or to stabilize or reduce the incidence of ground water depletion, conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements;

(j) It may require water quality monitoring and reporting of results to the district for all water wells within all or part of the management area;

(k) It may require district approval of (1) transfers of groundwater off the land where the water is withdrawn or (2) transfers of rights to use groundwater that result from district allocations imposed pursuant to subsection (1)(a) of this section or from other restrictions on use that are imposed by the district in accordance with this section. Such approval may be required whether the transfer is within the management area, from inside to outside the management area, or from outside to inside the management area. If the district adopts regulations pursuant to this subdivision, such regulations shall require that the district deny or condition the approval of any such transfer when and to the extent such action is necessary to (1) ensure the consistency of the transfer with the purpose or purposes for which the management area was designated; (2) prevent adverse impacts on other groundwater uses or on surface water appropriators; (3) prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement; and (4) otherwise protect the public interest and prevent detriment to the public welfare.

(l) It may require that when conditions so permit, new or replacement water wells to be used for domestic or other purposes shall be constructed to

such a depth that they are less likely to be affected by seasonal water level declines caused other water wells in the same area;

~~— (k) It may close all or a portion of the management area to the issuance of additional permits or may condition the issuance of additional permits on compliance with other rules and regulations adopted and promulgated by the district to achieve the purpose or purposes for which the management area was designated. This subdivision may be implemented whenever the district determines the impact on surface water supplies or the depletion or contamination of the ground water supply in the management area or any portion of the management area cannot be protected through implementation of reasonable controls specified in subdivisions (1)(a) through (1)(j) of this section; and~~

(l) It may adopt and promulgate such other reasonable rules and regulations as are necessary to carry out the purpose for which a management area was designated.

(2) In adopting, amending, or repealing any control authorized by subsection (1) of this section or sections 46-656.26 and 46-656.27, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the management area or will improve the administration of the area.

(3) Upon request by the district or when any of the controls being proposed are for the purpose of integrated management of managing hydrologically connected ground water and surface water, the Director of Natural Resources shall review and comment on the adoption, amendment, or repeal of any authorized control in a management area. The director may hold a public hearing to consider testimony regarding the control prior to commenting on the adoption, amendment, or repeal of the control. The director shall consult with the district and fix a time, place, and date for such hearing. In reviewing and commenting on an authorized control in a management area, the director's considerations shall include, but not be limited to, those enumerated in subsection (2) of this section.

(4) If because of varying ground water uses, varying surface water uses, different irrigation distribution systems, or varying climatic, hydrologic, geologic, or soil conditions existing within a management area the uniform application throughout such area of one or more controls would fail to carry out the intent of the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner, the controls adopted by the district pursuant to this section may contain different provisions for different categories of ground water use or portions of the management area which differ from each other because of varying climatic, hydrologic, geologic, or soil conditions. Any differences in such provisions shall recognize and be directed toward such varying ground water uses or varying conditions. Except as otherwise provided in this section, the provisions of all controls for different categories of ground water use shall be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions.

(5) The district may establish different water allocations for different irrigation distribution systems.

(6)(a) The district may establish different provisions

for different hydrologic relationships between ground water and surface water.

(b) For management areas a purpose of which is the integrated management of hydrologically connected ground water and surface water, the district may establish different provisions for water wells constructed before the designation of a management area for integrated management of hydrologically connected ground water and surface water and for water wells constructed on or after the designation date or any other later date or dates established by the district.

(c) For a management area in a basin or part of a basin that is or was the subject of litigation over an interstate water compact or decree in which the State of Nebraska is a named defendant, the district may establish different provisions for restriction of water wells constructed after January 1, 2001, if such litigation was commenced before or on May 22, 2001. If such litigation is commenced after May 22, 2001, the district may establish different provisions for restriction of water wells constructed after the date on which such litigation is commenced in federal court. An appeal from a decision of the district under this subdivision shall be in accordance with the hearing procedures established in the Nebraska Ground Water Management and Protection Act.

(d) Except as otherwise authorized by law, the district shall make a replacement water well as defined in section 46-602, or as further defined in district rules and regulations, subject to the same provisions as the water well it replaces.

(7) If the district has included controls delineated in subdivision (1)(~~mk~~) of this section in its management plan, but has not implemented such controls within two years after the initial public hearing on the controls, the district shall hold a public hearing, as provided in section 46-656.19, regarding the controls before implementing them.

(8) Whenever a management area designated under section 46-656.39 or sections __ to __ (the proactive legislation) ~~or 46-656.52~~ encompasses portions of two or more districts, the responsibilities and authorities delegated in this section and sections 46-656.26 and 46-656.27 shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected. Whenever management areas designated by two or more districts adjoin each other, the districts are encouraged to exercise the responsibilities and authorities jointly and uniformly by agreement of the respective boards.

~~(9) For the purpose of determining whether conflicts exist between ground water users and surface water appropriators, surface water appropriators under the Nebraska Ground Water Management and Protection Act does not include holders of instream flow appropriations under sections 46-2,107 to 46-2,119.~~

(9) In addition to the controls listed in subsection (1) of this section, a district in which a management area has been designated also may adopt and implement one or more of the following measures if it determines that any such measures would help the district and water users achieve the goals and objectives of the management area:

(a) It may sponsor non-mandatory educational programs; and

(b) It may establish and implement financial or other incentive programs. As a condition for participation in an incentive program, the district may

require water users or landowners to enter into and perform such agreements or covenants concerning the use of land or water as are necessary to produce the benefits for which the incentive program is established.

12-01-03
Draft Legislation
Modifications to Surface Water Adjudication Statutes

Note: the changes shown are to the 10-04 draft including changes made at and following the 11-18, 19 WPTF meeting

- 46-229.** All appropriations for water must be for some beneficial or useful purpose and, except as provided in sections 46-290 to 46-294 and 46-2,122 to 46-2,125, when the owner of an appropriation or his or her successor in interest ceases to use it for such purpose for more than five consecutive years, the right may be terminated only by the director pursuant to sections 46-229.02 to 46-229.05.
- 46-229.02** (1) If based upon the results of a field investigation or upon information provided by the owner of an appropriation or otherwise obtained by the department, the department makes preliminary determinations (a) that a water appropriation has not been used, in whole or in part, for some beneficial or useful purpose or having been so used at one time has ceased to be used, in whole or in part, for such purpose for more than five consecutive years and (b) that there is no reason known to the department that would constitute sufficient cause, as provided in section 46-229.04, for such nonuse or that such nonuse has continued beyond the additional time permitted because of the existence of any applicable sufficient cause, the department shall serve notice of such preliminary determinations upon the owner or owners of such appropriation and upon any other person who is an owner of the land under such water appropriation. Such notice shall contain the information required by section 46-229.03, shall be provided in the manner required by that section, and shall also be posted on the department's web site. Each owner of the appropriation or of the land under the appropriation shall have thirty days after the mailing or last publication, as applicable, of such notice to notify the department, on a form provided by the department, that he or she contests the department's preliminary determination of nonuse or the department's preliminary determination of the absence of sufficient cause for such nonuse. Such notification shall indicate the reason or reasons the owner is contesting the department's preliminary determination and may be accompanied by any information the owner believes is relevant to the issues of nonuse or sufficient cause for such nonuse.
- (2) If no owner of the water appropriation or of the land under the water appropriation provides notification to the department in accordance with subsection (1) of this section, the director may issue an order canceling the water appropriation, in whole or in part. The extent of such cancellation cannot exceed the extent described in the department's notice to the owner or owners in accordance with subsection (1) of this section. A copy of the order canceling the appropriation, or part thereof, shall be posted on the department's web site and shall be provided to the owner or owners of the appropriation and to any other owner of the land under the appropriation in

the same manner as notices are to be given in accordance with subsection (2), (3), or (4), as applicable, of section 46-229.03.

(3) If an owner of the appropriation provides notification to the department in accordance with subsection (1) of this section, the department shall review the owner's stated reasons for contesting the department's preliminary determination and any other information provided with the owner's notice. If the department determines that the owner has provided sufficient information for the department to conclude that the appropriation should not be cancelled in whole or in part, it shall inform the owners of the appropriation and any other owners of the land under the appropriation of that determination.

(4) If the department determines that an owner has provided sufficient information for the department to conclude that the appropriation should be cancelled only in part and if (a) the owner or owners filing the notice of contest agree in writing to that cancellation in part; and (b) the owner or owners agreeing thereto are the only known owners of the appropriation and of the land under the appropriation, the director may issue an order canceling the appropriation to the extent agreed to by the owner or owners and shall provide a copy of such order to such owner or owners.

(5) If the department determines that subsections (2), (3) and (4) of this section do not apply, it shall schedule and conduct a hearing on the cancellation of the appropriation, in whole or in part. Notice of the hearing shall be provided to the owner or owners who filed notices with the department pursuant to subsection (1) of this section, to any other owner of the appropriation known to the department, and to any other owner of the land under the appropriation. The notice shall be posted on the department's web site and shall be served or published, as applicable, in the manner provided in subsection (2), (3) or (4), as applicable, of section 46-229.03.

(6) Following a hearing conducted in accordance with subsection (5) of this section and subsection (1) of section 46-229.04, the director shall render a decision by order. A copy of the order shall be provided to the owner or owners of the appropriation and to any other person who is an owner of the land under the appropriation. The copy of the order shall be posted on the department's web site and shall be served or be published, as applicable, in the same manner as notices are to be given in accordance with subsection (2), (3) or (4), as applicable, of section 46-229.03, except that if publication is required, it shall be sufficient for the department to publish notice that an order has been issued. Any such published notice shall identify the land or lands involved and shall provide the address and phone number that may be used to obtain a copy of the order.

46-229.03 (1) The notice provided by the department in accordance with subsection (1) or subsection (5) of section 46-229.02 shall contain: (a) a description of the water appropriation; (b) the number assigned thereto by the department; (c) the date of priority; (d) the point of diversion; (e) a description of the lands which are located under such water appropriation; (f) if the notice is being served personally or by registered or certified mail, a description of the information used by the department to arrive at the preliminary

determinations of nonuse; (g) a description of the owner's options in response to the notice; (h) if the notice is being served personally or by registered or certified mail, a copy of section 46-229.04; (i) a department telephone number which any person may call during normal business hours for more information regarding the owner's rights and options, including what constitutes sufficient cause for nonuse; (j) if the notice is being provided in accordance with subsection (1) of section 46-229.02 and is being mailed, a copy of the form that such owner may file to request a departmental hearing; (k) if the notice is being provided in accordance with subsection (1) of section 46-229.02 and is being published, the location where the owner may obtain a form to file to request a departmental hearing; and (l) if the notice is being provided in accordance with subsection (5) of section 46-229.02, the date, time and location for the hearing.

(2) For any owner whose name and address is known by the department or can be reasonably obtained by the department, the notice shall be served personally or by registered or certified mail. Any landowner's name or address shall be considered reasonably obtainable if that person is shown as an owner of the land involved on the records of the county clerk or register of deeds for the county where that land is located.

(3) For any owner whose name and address is not known to the department and cannot be reasonably obtained by the department, such notice shall be served by the publication in a legal newspaper published or of general circulation in any Nebraska county in which the place of diversion is located and in a legal newspaper published or of general circulation in any Nebraska county that contains land for which the right to use water under the appropriation is subject to cancellation. Each such publication shall be once a week for three consecutive weeks.

(4) Landowners whose property under any such appropriation is located within the corporate limits of a city or village shall be served by the publication of such notice in a legal newspaper published or of general circulation in the county in which the city or village is located. The notice shall be published once a week for three consecutive weeks.

46-229.04 (1) At such hearing the verified field investigation report of an employee of the department shall be prima facie evidence for the forfeiture and annulment of such water appropriation. If no one appears at the hearing, such water appropriation or unused part thereof shall be declared forfeited and annulled. If someone interested appears and contests the same, the department shall hear evidence, and if it appears that such water has not been put to a beneficial use or has ceased to be used for such purpose for more than five consecutive years, the same shall be declared canceled and annulled unless (a) the department finds that there has been sufficient cause for such nonuse as provided for in subsection (2), (3) or (4) of this section or (b) subsection (5) of this section applies.

(2) Sufficient cause for nonuse shall be deemed to exist for up to thirty consecutive years if such nonuse was caused by the unavailability of water for that use. For a basin, sub-basin or reach that has been designated as

over appropriated or determined to be fully appropriated by the department, the period of time within which sufficient cause for nonuse because of the unavailability of water may be deemed to exist may be extended beyond thirty years by the department upon petition therefor by the owner of the appropriation if the department determines that an integrated management plan being implemented for the basin, sub-basin or reach involved is likely to result in restoration of a usable water supply for that appropriation.

- (3) Sufficient cause for nonuse shall be deemed to exist indefinitely if such nonuse was the result of one or more of the following:
- (a) For any tract of land under separate ownership, the available supply was used but on only part of the land under the water appropriation because of an inadequate water supply;
 - (b) The appropriation is a storage appropriation and there was an inadequate water supply to provide the water for the storage appropriation or less than the full amount of the storage appropriation was needed to keep the reservoir full; or
 - (c) The appropriation is a storage use appropriation and there was an inadequate water supply to provide the water for the appropriation or use of the storage water was unnecessary because of climatic conditions.

(4) Sufficient cause for nonuse shall be deemed to exist for up to fifteen consecutive years if such nonuse was a result of one or more of the following:

- (a) Federal, state, or local laws, rules, or regulations temporarily prevented or restricted such use;
- (b) Use of the water was unnecessary because of climatic conditions;
- (c) Circumstances were such that a prudent person, following the dictates of good husbandry, would not have been expected to use the water;
- (d) The works, diversions, or other facilities essential to use the water were destroyed by a cause not within the control of the owner of the appropriation, and good faith efforts to repair or replace the works, diversions, or facilities have been and are being made;
- (e) The owner of the appropriation was in active involuntary service in the armed forces of the United States or was in active voluntary service during a time of crisis; or
- (f) Legal proceedings prevented or restricted use of the water.
- (g) The land subject to the appropriation is then under an acreage reserve program or production quota or is otherwise withdrawn from use as required for participation in any federal or state program or such land previously was under such a program but currently is not under such a program and there have been no more than five consecutive years of nonuse on that land since that land was last under that program.

The department may specify by rule and regulation other circumstances that shall be deemed to constitute sufficient cause for nonuse for up to fifteen years.

(5) When an appropriation is held in the name of an irrigation district, public power and irrigation district, reclamation district or mutual irrigation company or canal company and the director determines that water under that appropriation has not been used on a specific parcel of land for more than five years and that no sufficient cause for such nonuse exists, the right to use water under that appropriation on that parcel shall be terminated and notice of that termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3) or (4) of section 46-229.03. The district or company holding that right shall have five years after that determination to assign the right to use that portion of the appropriation to other land or lands within and served by that district or company or to file an application for a transfer in accordance with section 46-290. The department shall be notified of any such assignment within thirty days thereafter. If the district or company does not assign the right to use that portion of the appropriation to other land or lands, does not file an application for a transfer within that five year period or does not notify the department within 30 days of any such assignment, that portion of the appropriation shall be cancelled without further department proceedings and the district or company involved shall be so notified by the department. During the time within which assignment of a portion of an appropriation is pending, the allowable diversion rate for the appropriation involved shall be reduced, as necessary, to avoid inconsistency with the rate allowed by section 46-231 or with any higher rate previously approved for that appropriation by the director in accordance with **section __ of this act**.

(6) When it is determined by the director that an appropriation for which the location of use has been temporarily transferred in accordance with **LB__ (the surface water transfer legislation) __**, has not been used at the new location for more than five years and that no sufficient cause for such nonuse exists, the right to use that appropriation at the temporary location of use shall be terminated. Notice of that termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3) or (4) of section 46-229.03. The right to reinstate use of that appropriation at the location of use prior to the temporary transfer shall continue to exist for five years after the director's determination, but if such use is not reinstated at that location within that five year period, the appropriation shall be subject to cancellation in accordance with this act.

(7) If at the time of a hearing conducted in accordance with subsection (1) of this section there is an application for incidental or intentional underground water storage pending before the department and filed by the owner of the appropriation, the proceedings shall be consolidated.

Section __. When a department proceeding that is conducted pursuant to sections 46-229 through 46-229.04 concerns the partial cancellation of an appropriation, the department may receive evidence on the question of whether, following such partial cancellation, a reduction in the rate of diversion to the maximum rate prescribed in section 46-231 would result in an authorized diversion rate less than the rate necessary, in the interests of

good husbandry, for the production of crops on the lands that remain subject to that appropriation. If the director determines, based on the preponderance of the evidence, that such rate would be less than the rate necessary for the production of crops, he or she may approve a diversion rate for the remaining portion of that appropriation greater than the maximum rate authorized by section 46-231. Such increased rate can be no greater than the rate authorized for that appropriation prior to the partial cancellation and no greater than the rate determined by the director to be necessary, in the interests of good husbandry, for the production of crops on the lands that remain subject to that appropriation.

46-2,127. After obtaining approval of an application for transfer and map pursuant to sections 46-2,122 to 46-2,126, the board of directors of any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company may transfer an appropriation of water distributed for agricultural purposes from a tract or tracts of land within the district or served by the company to another tract or tracts of land within the boundaries of the district or served by the company if:

- (1) The district or company finds that the transferring tract of land has received and had water, delivered by the district or company pursuant to a valid appropriation, beneficially applied in at least one of the preceding five consecutive years or that there has been sufficient cause for nonuse of the water as provided in section 46-229.04;

(No changes would be needed in the remaining subsections of section 46-2,127.)

**12-1-03 Draft
WPTF Legislation
Surface Water Right Transfers,
Changes in Type of Appropriation And Changes in Use
(Both Permanent and Temporary)**

**Note: Changes shown are to 11-14-03 draft as that draft was modified at
and as a result of the 11-18,19 WPTF meeting**

46-290. (1) Except as limited by this section and as separately and additionally authorized by sections 46-2,120 through 46-2,130, any person having a permit to appropriate water for beneficial purposes issued pursuant to sections 46-233 through 46-235, section 46-241, or 46-242 and who desires (a) to transfer the use of such water appropriation to a location other than the location specified in the permit, (b) to change that appropriation to a different type of appropriation as provided in subsection (3) of this section, and/or (c) to change the purpose for which the water is to be used under a natural flow or storage use appropriation to a purpose not then permitted under that appropriation shall apply for approval of such transfer and/or change to the Department of Natural Resources. The application for such approval shall contain the number assigned such appropriation by the department; the name and address of the present holder of the appropriation; if applicable, the name and address of the person or entity to whom the appropriation is proposed to be transferred or who will be the water user of record after a change in the type of appropriation or purpose of use under the appropriation; the legal description of the land to which the appropriation is now appurtenant; if applicable, the legal description of the land to which the appropriation is proposed to be transferred; if a transfer is proposed, whether other sources of water are available at the original location of use and whether any provisions have been made to prevent either use of a new source of water at the original location or increased use of water from any existing source at that location; if applicable, the legal descriptions of the beginning and end of the stream reach to which the appropriation is proposed to be transferred for the purpose of augmenting the flows in that stream reach; if a proposed transfer is for the purpose of increasing the quantity of water available for use pursuant to another appropriation, the number assigned such other appropriation by the department; the purpose of the current use; if a change in purpose of use is proposed, the proposed purpose of use; if a change in the type of appropriation is proposed, the type of appropriation to which a change is desired; if a proposed transfer or change is to be temporary in nature, the duration of the proposed transfer or change; and such other information as the department shall require by rule and regulation.

(2) If a proposed transfer or change is to be temporary in nature, a copy of the proposed agreement between the current appropriator and the person who is to be responsible for use of water under the appropriation while the transfer or change is in effect shall be submitted at the same time as the application.

(3) Regardless of whether a transfer or a change in the purpose of use is involved, the following changes in type of appropriation, if found by the director

to be consistent with section 46-294, may be approved in accordance with this act: (a) a natural flow appropriation for direct out-of-stream use may be changed to a natural flow appropriation for above ground reservoir storage or for intentional underground water storage; (b) a natural flow appropriation for intentional underground water storage may be changed to a natural flow appropriation for direct out-of-stream use or for above ground reservoir storage; (c) a natural flow appropriation for direct out-of-stream use, for above ground reservoir storage or for intentional underground water storage may be changed to an instream appropriation subject to sections 46-2,107 through 46-2,119 if the director determines that the resulting instream appropriation would be consistent with subdivisions (2), (3), and (4) of section 46-2,115; (d) a natural flow appropriation for direct out-of-stream use, for above ground reservoir storage or for intentional underground water storage may be changed to an appropriation for induced ground water recharge if the director determines that the resulting appropriation for induced ground water recharge would be consistent with subdivisions (a)(i) and (a)(ii) of subsection (2) of section 46-235; and (e) the incidental underground water storage portion, whether or not previously quantified, of a natural flow or storage use appropriation may be separated from the direct use portion of that appropriation and may be changed to a natural flow or storage use appropriation for intentional underground water storage at the same location if the historic consumptive use of the direct use portion of that appropriation is transferred to another location or is terminated, but such a separation and change may be approved only if, after that separation and change, (i) the total permissible diversion under the appropriation will not increase; (ii) the projected consequences of that separation and change are consistent with the provisions of any integrated management plan adopted in accordance with **section 8 or 11 of _____ (The Proactive Legislation)** for the geographic area involved; and (iii) if the location of the proposed intentional underground water storage is in a basin, sub-basin or reach designated as over-appropriated in accordance with **Section __ of (The Proactive Legislation)**, the integrated management plan for that basin, sub-basin or reach has gone into effect and that plan requires that the amount of the intentionally stored water that is consumed after the change will be no greater than the amount of the incidentally stored water that was consumed prior to the change. Approval of a separation and change pursuant to subdivision (e) of this subsection will not exempt any consumptive use associated with the incidental recharge right from any reduction in water use required by an integrated management plan for a basin, sub-basin or reach designated as over appropriated in accordance with **Section __ of (The Proactive Legislation)**. Whenever any change in type of appropriation is approved pursuant to this subsection and as long as that change remains in effect, the appropriation shall be subject to the statutes and rules and regulations that apply to the type of appropriation to which the change has been made.

(4) The legislature finds that induced ground water recharge appropriations issued pursuant to sections 46-233 and 46-235 and instream appropriations issued pursuant to section 46-2,115 are specific to the location identified in the appropriation. Until the legislature provides additional guidance by legislative act, neither of those types of appropriations shall be transferred to a different

location, changed to a different type of appropriation, or changed to permit a different purpose of use.

(5) In addition to any other purposes for which transfers and changes may be approved in accordance with this act, such transfers and changes may be approved if the purpose is (a) to augment the flow in a specific stream reach for any instream use that the department has determined, through rules and regulations, to be a beneficial use or (b) to increase the frequency that a diversion rate or rate of flow specified in another valid appropriation is achieved. For any transfer or change approved pursuant to subdivision (a) of this subsection, the department shall be provided with a report at least every five years while such transfer or change is in effect. The purpose of such report shall be to indicate whether the beneficial instream use for which the flow is augmented continues to exist. If the report indicates that it does not or if no report is filed within sixty days of the department's notice to the appropriator that the deadline for filing the report has passed, the department may cancel its approval of the transfer or change and such appropriation shall revert to same location of use, type of appropriation and purpose of use as prior to such approval

(6) A quantified or unquantified appropriation for incidental underground water storage may be transferred to a new location along with the direct use appropriation with which it is recognized if the director finds such transfer to be consistent with section 46-294 and determines that the geologic and other relevant conditions at the new location are such that incidental underground water storage will occur at the new location. The director may request such information from the applicant as is needed to make that determination and may modify any such quantified appropriation for incidental underground water storage, if necessary, to reflect the geologic and other conditions at the new location.

(7) Unless an incidental underground water storage appropriation is changed as authorized by subdivision (f) of subsection (3) of this section or is transferred as authorized by subsection (6) of this section or by subsection (1) of section 46-291, such appropriation shall be cancelled or be modified, as appropriate, by the director to reflect any reduction in water that will be stored underground as the result of a transfer or change, pursuant to this act, of the direct use appropriation with which the incidental underground water storage was recognized prior to the transfer or change.

46-291 (1) Upon receipt of an application filed under section 46-290 for a transfer in the location of use, the department shall review it for compliance with this subsection. The director may approve the application without notice or hearing if he or she determines as follows: (a) that the appropriation is used and will continue to be used exclusively for irrigation purposes; (b) that the only lands involved in the proposed transfer are (i) lands within the quarter section to which the appropriation is then appurtenant, (ii) lands within such quarter section and one or more quarter sections each of which is contiguous to that quarter section, or (iii) lands within the boundaries or service area of and

capable of service by the same irrigation district, public power and irrigation district, reclamation district or mutual irrigation or canal company; (c) that, after the transfer, the total number of acres that will be irrigated under the appropriation will be no greater than the number of acres that could be legally irrigated under the appropriation prior to the transfer; (d) that all the land involved in the transfer is under the same ownership or is within the same irrigation district, public power and irrigation district, reclamation district or mutual irrigation or canal company; (e) that the transfer will not result in a change in the point of diversion; and (f) that the transfer will not diminish the water supply available for or otherwise adversely affect any other water appropriator. If transfer of an appropriation with associated incidental underground water storage is approved in accordance with this subsection, the associated incidental underground water storage also may be transferred pursuant to this subsection as long as that transfer would continue to be consistent with the requirements of this subsection. If necessary, the boundaries of the incidental underground water storage area may be modified to reflect any change in the location of that storage consistent with such a transfer. Transfers shall not be approved pursuant to this subsection until the department has adopted and promulgated rules and regulations establishing the criteria it will use to determine whether proposed transfers are consistent with subdivision (f) of this subsection.

(2) If after reviewing an application filed under section 46-290, the Director of Natural Resources determines that it cannot be approved pursuant to subsection (1) of this section, he or she shall cause a notice of such application to be posted on the department's web site and to be published at the applicant's expense at least once a week for three consecutive weeks in at least one newspaper of general circulation in each county containing lands to which the water appropriation is then appurtenant and, if applicable, in at least one newspaper in each county containing lands to which the appropriation is proposed to be transferred.

Such notice shall contain a description of the water appropriation; the number assigned such appropriation in the records of the Department of Natural Resources; the date of priority; if applicable, a description of the land or stream reach to which such water appropriation is proposed to be transferred; if applicable, the type of appropriation to which the appropriation is proposed to be changed; if applicable, the proposed change in the purpose of use; whether the proposed transfer or change is to be permanent or temporary, and if temporary, the duration of the proposed transfer or change; and any other information deemed by the director to be relevant and essential to provide the interested public with adequate notice of the proposed transfer or change.

The notice shall state (1) that any interested person may object to and request a hearing on the application by filing such objections in writing specifically stating the grounds for each objection and (2) that any such objection and request shall be filed in the office of the department within two weeks after the date of final publication.

Within the time period allowed by this section for the filing of objections and requests for hearings, the county board of commissioners or supervisors for any county containing lands to which the appropriation is then appurtenant and, if applicable, the county board of commissioners or supervisors for any county containing lands to which the appropriation is proposed to be transferred may provide the department with comments about the potential economic impacts of the proposed transfer or change in that county. The filing of any such comments by a county board shall not make the county a party in the application process, but such comments shall be considered by the director in determining, as provided in section 46-294, whether the proposed transfer or change is in the public interest.

46-292 The Department of Natural Resources may hold a hearing on an application filed under section 46-290 on its own motion and shall hold a hearing if a timely request therefore is filed by any interested person in accordance with subsection (2) of section 46-291.

46-293 (1) The director shall independently review each application subject to subsection (2) of section 46-291 to determine whether the requirements of section 46-294 will be met if the transfer or change is approved. This duty is not altered when there are objectors who have become parties to the proposed transfer or change, but if a hearing is called by the department on its own motion or as the result of a request therefore filed in accordance with subsection (2) of section 46-291, any evidence considered by the director in making such determinations shall be made a part of the record of the hearing as provided in section 84-914.

(2) Either on his or her own motion or in response to objections or comments received pursuant to subsection (2) of section 46-291, the director may require the applicant to provide additional information before a hearing will be scheduled or, if no hearing is to be held, before the application will receive further consideration. The information requested may include economic, social or environmental impact analyses of the proposed transfer or change, information about the water historically consumed under the appropriation, copies of any plans for mitigation of any anticipated adverse impacts that would result from the proposed transfer or change, and such other information as the director deems necessary in order to determine whether the proposed transfer or change is consistent with section 46-294.

46-294 (1) Except for applications approved in accordance with subsection (1) of section 46-291, the Director of Natural Resources shall approve an application filed pursuant to section 46-290 only if the application and the proposed transfer or change meet the following requirements:

- (a) The application is complete and all other information requested pursuant to section 46-293 has been provided;
- (b) The proposed use of water after the transfer or change would be a beneficial use of water;
- (c) Any requested transfer in the location of use is within the same river basin as defined in section 46-288 or the basin from which the appropriation is to

be transferred is tributary to the basin to which appropriation is to be transferred;

- (d) Except as provided otherwise in subsection (4) of this section, the proposed transfer or change, in and of itself, or when combined with any new or increased use of any other source of water at the original location or within the same irrigation district, public power and irrigation district, reclamation district or mutual irrigation or canal company for the original or other purposes, will not diminish the supply of water available for or otherwise adversely affect any other water appropriator and will not significantly adversely affect any riparian water user who files an objection in writing pursuant to section 46-291;
- (e) The quantity of water that is transferred for diversion or other use at the new location will not exceed the historic consumptive use under the appropriation or portion thereof being transferred, provided that this subdivision shall not apply to a transfer in the location of use if both the current use and the proposed use are for irrigation, the number of acres to be irrigated will not increase after the transfer, and the location of the diversion from the stream will not change;
- (f) The appropriation, prior to the transfer or change, shall not be subject to termination or cancellation pursuant to sections 46-229 through 46-229.05;
- (g) If a proposed transfer or change is of an appropriation that has been used for irrigation and is in the name of the irrigation district, public power and irrigation district, reclamation district or mutual irrigation or canal company or is dependent upon any such district's or company's facilities for water delivery, such district or company has approved the transfer or change;
- (h) If the proposed transfer or change is of a storage use appropriation and if the owner of that appropriation is different from the owner of the associated storage appropriation, the owner of that storage appropriation has approved the transfer or change;
- (i) If the proposed transfer or change is to be permanent in nature, either (i) the purpose for which the water is to be used before the transfer or change is in the same preference category established by section 46-204 as the purpose for which the water is to be used after the transfer or change or (ii) the purpose for which the water is to be used before the transfer or change and the purpose for which the water is to be used after the transfer or change are both purposes for which no preferences are established by that section;
- (j) If the proposed transfer or change is to be temporary in nature, it will be for a duration of no less than one year and, except as provided in section ___ of this act, no more than thirty years;
- (k) The transfer or change will not be inconsistent with any applicable state or federal law and will not jeopardize the state's compliance with any applicable interstate water compact or decree or cause difficulties in fulfilling the provisions of any other formal state contract or agreement; and
- (l) The proposed transfer or change is in the public interest. The director's considerations relative to the public interest shall include but not be limited to (i) the economic, social, and environmental impacts of the proposed transfer or change; and (ii) whether and under what conditions other sources of water are available for the uses to be made of the appropriation after the proposed transfer or change. The department shall adopt and

promulgate rules and regulations to govern the director's determinations of whether proposed transfers and changes are in the public interest.

(2) The applicant has the burden of proving that the proposed transfer or change will be in compliance with subdivisions (a) through (k) of this subsection, except (a) the burden is on the riparian user to demonstrate his or her riparian status and to demonstrate a significant adverse effect on his or her use in order to prevent approval of an application; and (b) if both the current use and the proposed use after a transfer are for irrigation, the number of acres to be irrigated will not increase after the transfer and the location of the diversion from the stream will not change, there shall be a rebuttable presumption that the transfer will be consistent with subsection (d) of this section.

(3) In approving an application, the director may impose any reasonable conditions deemed necessary to protect the public interest, to ensure consistency with any of the other criteria in subsection (1) of this section, or to provide the department with information needed to properly and efficiently administer the appropriation while the transfer or change remains in effect. If necessary to prevent diminution of supply for any other appropriator, the conditions imposed by the director shall require that historic return flows be maintained or replaced in quantity, timing and location. After approval of any such transfer or change, the appropriation shall be subject to all water use restrictions and requirements in effect at any new location of use and, if applicable, at any new diversion location. An appropriation for which a transfer or change has been approved shall retain the same priority date as that of the original appropriation. If an approved transfer or change is temporary in nature, the location of use, purpose of use and/or type of appropriation shall revert to the location, purpose of use and type of appropriation prior to the transfer or change.

(4) In approving an application for a transfer, the director also may authorize the overlying of water appropriations on the same lands, provided that if any such overlying of appropriations would result in either the authorized diversion rate or the authorized aggregate annual quantity that could be diverted to be greater than is otherwise permitted by section 46-231, the director shall limit the total diversion rate or aggregate annual quantity for the appropriations overlain to the rate or quantity that he or she determines is necessary, in the exercise of good husbandry, for the production of crops on the land involved. The director also may authorize a greater number of acres to be irrigated if the amount and rate of water approved under the original appropriation is not increased by the change of location, provided that, an increase in the number of acres to be irrigated shall be approved only if (a) such an increase would not diminish the supply of water available to or otherwise adversely affect another water appropriator or (b) the transfer would not adversely affect the water supply for any basin, sub-basin or reach that has been designated as over appropriated or determined to be fully appropriated pursuant to sections ___ of LB ___ (the proactive legislation) and (i) the number of acres authorized under the appropriation when originally approved have not been increased previously; (ii) the increase in the number of acres irrigated would not exceed five percent of the number of acres being irrigated under the permit before the proposed

transfer or a total of ten acres, whichever acreage is less; and (iii) all the use will be either on the quarter section to which the appropriation was appurtenant before the transfer or on an adjacent quarter section.

Section ___. Whenever a temporary transfer is approved in accordance with this act, the department shall cause copies of the following to be filed with the county clerk or register of deeds of the county in which the land subject to the appropriation prior to the transfer is located: (1) the permit by which the appropriation was established; (2) the agreement by which the temporary transfer is to be effectuated; and (c) the director's order approving the temporary transfer. Such documents shall be indexed to that land. The costs of the filing and indexing shall be charged to the applicant for the transfer and failure to pay such costs shall be grounds for the director to negate any prior approval of the transfer.

Section ___. A temporary transfer or a change in the type or purpose of use of an appropriation may be renewed or otherwise extended by the parties thereto at any time following the midpoint of the transfer or change term, but any such renewal or extension is subject to review and approval pursuant to sections ___ to ___ of this act. No renewal or extension shall cause the term of any such temporary transfer or change to exceed thirty years in duration from the date the renewal or extension is approved by the director.

Section ____ For purposes of assessment pursuant to sections 77-1343 to 77-1365, neither the temporary transfer or change of an appropriation nor any resulting land use changes on the land to which the appropriation was appurtenant prior to the transfer or change shall cause that land to be reclassified to a lower value use or the valuation of that land to be reduced, but that land may be reclassified to a higher value use and its valuation may be increased if a higher value use is made of that land while the temporary transfer or change is in effect. Land from which an appropriation has been permanently transferred shall be classified and valued for tax purposes in accordance with the use of that land after the transfer.

Section ___. During the time within which a temporary transfer or change in purpose of use of an appropriation is in effect, that appropriation may not be used to invoke any rights of condemnation that are based on preference of use, but such appropriation shall be subject to the exercise of such rights by owners of other appropriations that are for water uses superior to the pre-transfer or pre-change use of the water under the transferred or changed appropriation..

Section ____ In addition to the rule and regulation requirements found in sections ___ and ___ of this act, the director may adopt and promulgate such other rules and regulations as are deemed necessary to carry out the purposes of this act.

8-24-2003

Draft Legislation for WPTF Executive Committee Consideration

**NRD Regulation of Transfers of Groundwater
And of
Transfers of Rights to Use Groundwater**

Add the following new provision to Section 46-656.25:

(l) It may require district approval of (1) transfers of groundwater off the land where the water is withdrawn and/or (2) transfers of rights to use groundwater that result from district allocations imposed pursuant to subsection (1)(a) of this section or other restrictions on use that are imposed by the district in accordance with this section. Such approval may be required whether the transfer is within the management area, from inside to outside the management area, or from outside to inside the management area. If the district adopts regulations pursuant to this subdivision, such regulations shall require that the district deny or condition the approval of any such transfer when and to the extent such action is necessary to (1) ensure the consistency of the transfer with the purpose or purposes for which the management area was designated; (2) prevent adverse impacts on other groundwater uses or on surface water appropriators; (3) prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement; -or the environment; and (34) otherwise protect the public interest and prevent detriment to the public welfare.

11-08-03 Draft
Legislation to Allow
Transfers of Groundwater Off the Overlying Land
For
Environmental and Recreational Purposes

(1) Any person intending to withdraw ground water from any water well located in the State of Nebraska, transport that water off the overlying land, and use it to augment water supplies in any Nebraska wetland or natural stream for the purpose of benefiting fish or wildlife or producing other environmental or recreational benefits may do so only if the natural resources district in which the well is or would be located allows withdrawals and transport for such purposes and only after applying for and obtaining a permit from that natural resources district. An application for any such permit shall be accompanied by a non-refundable fee of fifty dollars payable to that district. Such permit shall be in addition to any permit required pursuant to section 46-656.29.

(2) Prior to taking action on an application pursuant to this section, the district shall provide an opportunity for public comment on such application at a regular or special board meeting for which advance publicized notice of the meeting and of the agenda for that meeting have been given consistent with section 84-1410.

(3) In determining whether to grant a permit under this section, the board of directors for the natural resources district shall consider:

(a) Whether the proposed environmental use is a beneficial use of ground water;

(b) The availability to the applicant of alternative sources of surface water or ground water for the intended use;

(c) Any negative effect of the proposed withdrawal on ground water supplies needed to meet present or reasonable future demands for water in the area of the proposed withdrawal, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(d) Any negative effect of the proposed withdrawal on surface water supplies needed to meet present or reasonable future demands within the state, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(e) Any adverse environmental effect of the proposed withdrawal, transport or use of the ground water;

(f) The cumulative effects of the proposed withdrawal, transport and use relative to the matters listed in subdivisions (c) through (e) of this section when considered in conjunction with all other withdrawals, transports and uses subject to this section;

(g) Whether the proposed withdrawal, transport and use is consistent with the district's ground water quantity and quality management plan and with any integrated management plan previously adopted or being considered for adoption in accordance with sections __ to __ of __ (the proactive legislation); and

(h) Any other factors consistent with the purposes of this section and that the board of directors deems relevant to protect the interests of the state and its citizens.

(4) Issuance of a permit shall be conditioned on the

applicant's compliance with the rules and regulations of the natural resources district from which the water is to be withdrawn and, if the location where the water is to be used to produce the intended benefits is in a different natural resources district, with the rules and regulations of that natural resources district. The board of directors may include such reasonable conditions on the proposed withdrawal, transport and use as it deems necessary to carry out the purposes of this section.

(5) The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of any district where the water is to be withdrawn or to be used.

Section 46-609

46-609

Irrigation water wells; spacing; requirements; exceptions.

(1) Except as otherwise provided by this section or by section 46-610, No irrigation water well shall be drilled upon any land in this state within six hundred feet of any registered irrigation water well and no existing non-irrigation water well within six hundred feet of any registered irrigation water well shall be used for irrigation purposes. Such spacing requirement shall not apply to (a) any well used to irrigate two acres or less or (b) except (a) any water well the water from which is used solely for domestic, culinary, stock use on a ranch or farm, or the watering of lawns and gardens for family use or profit where the area to be irrigated does not exceed two acres, (b) as provided in section 46-610, and (c) that any replacement irrigation water well if it is drilled within fifty feet of which replaces an the irrigation water well being replaced and if the water well being replaced was drilled prior to September 20, 1957, and which is less than six hundred feet from a registered irrigation water well. shall be drilled within fifty feet of the old water well.

(2) The spacing protection of subsection (1) of this section shall apply to an unregistered water well for a period of sixty thirty days after completion of such water well.

Section 46-613.02

46-613.02

Violation; penalty; false information; enforcement.

Any person violating any provision of sections 46-601 to 46-613.01 or furnishing false information under such sections shall be guilty of a Class IV misdemeanor.

~~The Department of Natural Resources may enforce such sections by instituting proceedings, actions, and prosecutions.~~

Each day of violation may be considered a separate offense. The Attorney General and the County Attorney are authorized to pursue appropriate proceedings pursuant to this section when notified by the Director of Natural Resources that such a violation has occurred.

Section 46-651

46-651

Spacing of water wells; distance.

(1) Except as provided in section 46-653 or 46-654, (a) no irrigation or industrial water well or water well of any other public water supplier shall be drilled within one thousand feet of any registered water well of any public water supplier, (b) no water well of any such public water supplier shall be drilled within one thousand feet of any registered irrigation or industrial water well, (c) no irrigation water well shall be drilled within one thousand feet of a registered industrial water well, and (d) no industrial water well shall be drilled within one thousand feet of a registered irrigation or industrial water well. Such prohibitions shall not apply to water wells owned by the same person.

(2) An existing water well for which a change in the intended use is proposed shall be subject to any subsection (1) spacing requirement that would apply to the drilling of a new well at the same location for the new use intended.

— (32) The well-spacing protection of subsections (1) and (2) of this section shall apply to an unregistered water well for a period of only thirty sixty days following completion of such water well.

(4) The spacing requirements in subsection (1) of this section shall not apply to any replacement water well if that well is drilled within fifty feet of the water well being replaced and if the water well being replaced was drilled prior to the effective date of this act, was in compliance with any applicable spacing statute when drilled, and is less than one thousand feet from the registered water well for which spacing protection is provided.

Section 46-653

46-653

Special permit to drill without regard to spacing; application; contents; fee.

Any person may apply to the Director of Natural Resources for a special permit to drill or change the intended use of a water well without regard to the spacing requirements of section 46-651. Such application shall be on a form prescribed and furnished by the director and shall contain a statement of the precise location of the water well or proposed water well, facts justifying the request for such special permit, the size or proposed size of such water well, expressed in gallons per minute, to the extent that capacity is susceptible of advance determination, and, if applicable, the name of the person who is actually going to drill the water well. A separate application shall be submitted for each water well for which a special permit is sought, and each application shall be accompanied by a fee of twelve dollars and fifty cents which shall be remitted to the State Treasurer for credit to the General Fund. When considering the approval or rejection of any such application, the director shall consider the facts offered as justification of the need for special permit, the known ground water supply, and such other pertinent information as may be available. Such application may be approved or disapproved in whole or in part and the special permit issued or refused accordingly.

Section 46-678.01

46-678.01

Withdrawal and transfer of less than 150 acre-feet; notice; metering.

Any person who desires to withdraw and transfer a total of less than one hundred fifty acre-feet of ground water per year from aquifers located in the State of Nebraska for industrial purposes to other property within the state which is owned or leased by such person shall provide written notice to the department and install a water meter or meters that meet the approval of the department. Such notice shall include the amount of the proposed transfer, the point of withdrawal, and the point of delivery and shall be published once each week for three consecutive weeks in a newspaper of general circulation in the county or counties in which the point of withdrawal is located. The withdrawal and transfer may be made without a permit issued pursuant to the Industrial Ground Water Regulatory Act | so long as (1) the property which includes the point of withdrawal and the property which includes the point of delivery are owned or leased by the same person, (2) the water is used by such person, and (3) a total of less than one hundred fifty acre-feet of ground water per year is transferred from all sources to the property which includes the point of delivery.

46-680

Completed application; public hearing required.

- (1) After the director has accepted the application made under section 46-677 as a completed application, the director shall ~~set a time and place for a public hearing on the application. The hearing shall be held within or in reasonable proximity to the area in which the water wells would be located. The hearing shall be scheduled within ninety days after the application is accepted by the director.~~ cause a notice of such application to be published at the applicant's expense at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in each county containing lands on which one or more water wells are proposed to be located. The notice shall include the following: the amount of ground water the applicant proposes to use; a description of the proposed use and the location of that use; the number of water wells proposed at each location of withdrawal; and any other information deemed necessary by the director to provide adequate notice of the application to interested persons. The notice shall state that any interested person may object to and request a hearing on the application by filing written objections stating the grounds for each objection within two weeks after the date of final publication of the notice. Such objections shall be filed in the headquarters office of the Department of Natural Resources.
- (2) The director may hold a hearing on an application made under section 46-677 on his or her own motion and shall hold a hearing on such an application if requested by any interested person pursuant to subsection (1) of this section.

46-237

Map or plat; requirements; failure to furnish; effect.

(1) Within six months after approval and allowance of an application other than an application to appropriate public waters for induced ground water recharge, the applicant shall file in the office of the department a map or plat which shall conform to the rules and regulations of the department as to material, size, and coloring and be upon a scale of not less than two inches to the mile. Such map or plat shall show the source from which the proposed appropriation is to be taken and all proposed dams, dikes, reservoirs, canals, powerhouses, and other structures for the purpose of storing, conveying, or using water for any purpose whatsoever and their true courses or positions in connection with the boundary lines and corners of lands which they occupy. —The lands to be irrigated shall be identified in the manner prescribed by the department. Land listed for irrigation shall be shown in government subdivisions or fractions thereof, as the case may be, and nNo rights shall be deemed to have been acquired until the provisions of this section have been complied with. Except as provided in subsection (2) of this section, failure to so comply shall work a forfeiture of the appropriation and all rights thereunder.

(2) For any appropriative right with a priority date earlier than 1958 but for which either the appropriator has failed to comply with the requirements of subsection (1) of this section or a map or plat required by that subsection has been lost or destroyed through no fault of the appropriator, the lack of such compliance or of such map or plat shall not be the basis for a departmental adjudication or cancellation of the appropriative right, nor shall that right be subject to legal challenge by any party on that basis.

(3) The department may notify any appropriator subject to subsection (2) of the need to file a map of lands under that appropriation. Unless the department grants an extension for good cause shown, the appropriator shall file the required map within three years after that notification and such map shall conform to the rules and regulations of the department as to material, size, coloring and scale. If the appropriator fails to comply, the department may deny the appropriator the right to divert or withdraw water subject to the appropriation until compliance has been achieved.

Section 46-2,112

46-2,112

Permit to appropriate water for instream flows; hearing; when; notice; director; powers.

~~The director shall set a time and place for hearing every fifteen years from the date a~~ A permit to appropriate water for instream flows shall be subject to review every fifteen years after it is granted. Notice of ~~the hearing~~ a pending review shall be ~~given to the parties to the original application and shall be~~ published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks, the last publication to be not later than fourteen years, ten months after the permit was granted or after the date of the director's action following the last such review. ~~less than seven days prior to the hearing.~~ The notice shall state that any interested person may file comments relating to the review of the instream appropriation or may request a hearing to present evidence relevant to that review. Any such comments or request for hearing shall be filed in the headquarters office of the department within six weeks after the date of final publication of the notice. If requested by any interested person, the director shall schedule a hearing. The purpose of the hearing shall be to receive evidence regarding whether the water appropriated under the permit still provides the beneficial uses for which the permit was granted and whether the permit is still in the public interest. The hearing shall proceed under the rebuttable presumption that the appropriation continues to provide the beneficial uses for which the permit was granted and that the appropriation is in the public interest. After the hearing, the director may by order modify or cancel, in whole or in part, the instream appropriation.

Section 46-2,119

46-2,119

Instream appropriations; manner of administration.

Instream appropriations shall be administered in the same manner as prescribed by Chapter 46, article 2, for other appropriations. ~~, except that existing~~ Reservoirs shall not be required by the director to release, for the benefit of an instream appropriation, impounded ~~water previously impounded in accordance with section 46-241 or section 46-243. for instream appropriations.~~ Reservoirs with storage rights senior to an instream appropriation shall not be required to pass, for the benefit of an instream appropriation, inflows that could be stored by that reservoir if the instream appropriation were not in effect. Notwithstanding subsection (5) of section 46-241, a reservoir with storage rights senior to an instream appropriation also shall not be required to pass inflows for downstream direct irrigation if the appropriation for direct irrigation is junior to and would be denied water because of that instream appropriation. Instream flow appropriations shall not be superior to existing storage rights as provided in section 46-241. Instream appropriations may be canceled as provided in section 46-229.04.

Section 5
Section 61-206

61-206

Department of Natural Resources; jurisdiction; rules; hearings; orders; powers and duties.

(1) The Department of Natural Resources is given jurisdiction over all matters pertaining to water rights for irrigation, power, or other useful purposes except as such jurisdiction is specifically limited by statute. Such department shall adopt and promulgate rules and regulations governing matters coming before it. It may refuse to allow any water to be used by claimants until their rights have been determined and made of record. It may request information relative to irrigation and water power works from any county, irrigation, or power officers and from any other persons. It ~~may~~shall have public hearings on complaints, petitions, or applications in connection with any of such matters. Such hearings ~~shall~~may be had at the time and place designated by the department. The department shall have power to certify official acts, compel attendance of witnesses, take testimony by deposition as in suits at law, and examine books, papers, documents, and records of any county, party, or parties interested in any of the matters mentioned in this section or have such examinations made by its qualified representative and shall make and preserve a true and complete transcript of its proceedings and hearings. If a final decision is made without a hearing, a hearing shall be held at the request of any party to the proceeding if the request is made within fifteen days after the decision is rendered. If a hearing is held at the request of one or more parties, the department may require each such requesting party and each person who requests to be made a party to such hearing to pay the proportional share of the cost of such transcript. Upon any hearing, the department shall receive any evidence relevant to the matter under investigation and the burden of proof shall be upon the person making the complaint, petition, and application. After such hearing and investigation, the department shall render a decision in the premises in writing and shall issue such order or orders duly certified as it may deem necessary.

(2) The department shall serve as the official agency of the state in connection with water resources development, soil and water conservation, flood prevention, watershed protection, and flood control.

(3) The department shall:

(a) Offer assistance as appropriate to the supervisors or directors of any subdivision of government with responsibilities in the area of natural resources conservation, development, and use in the carrying out of any of their powers and programs;

(b) Keep the supervisors or directors of each such subdivision informed of the activities and experience of all other such subdivisions and facilitate cooperation and an interchange of advice and experience between such subdivisions;

(c) Coordinate the programs of such subdivisions so far as this may be done by advice and consultation;

(d) Secure the cooperation and assistance of the United States, any of its agencies, and agencies of this state in the work of such subdivisions;

(e) Disseminate information throughout the state concerning the activities and programs of such subdivisions;

(f) Plan, develop, and promote the implementation of a comprehensive program of resource development, conservation, and utilization for the soil and water resources of this state in cooperation with other local, state, and federal agencies and organizations;

(g) When necessary for the proper administration of the functions of the department, rent or lease space outside the State Capitol; and

(h) Assist such local governmental organizations as villages, cities, counties, and natural resources districts in securing, planning, and developing information on flood plains to be used in developing regulations and ordinances on proper use of these flood plains.

12-05-03 Draft
Additions to DNR Surface Water Cleanup Bill
Updating Surface Water Right Records
And Annual Water Use Reports

Section _____. Section 46-230, Reissue Revised Statutes of Nebraska, is amended to read:

46-230. (1) As the adjudication of a stream progresses and as each claim is finally adjudicated, the director shall make and cause to be entered of record in his or her office an order determining and establishing the priorities of right to use the water of such stream, the amount of the appropriation of the persons claiming water from such stream and the character of use for which each appropriation is found to have been made, and the address of the owner of each water appropriation.

(2)- ~~Whenever so requested by the department, it~~ shall be the duty of ~~the every~~ owner of an appropriation ~~not held by an irrigation district, reclamation district, public power and irrigation district or mutual irrigation or canal company~~ to ~~provide give notice to~~ the department ~~with the name or names, address or addresses and telephone number or numbers of the then current owner or owners of the appropriation and with the name, address and telephone number of any tenant or other person who is authorized by the owner or owners to receive opening and closing notices and other department communications relating to that appropriation. It also shall be the duty of each appropriation owner to notify the department any time there has been a change in any of names, addresses or telephone numbers described above. Notice of ownership changes may be provided to the department in the manner provided in section 76-2,124 or in any other manner authorized by the department. If notice of an ownership change is provided other than in accordance with section 76-2,124, of its address and any change of its address or of the name of the owner of the appropriation. Notification shall be in such form and of its address and any change of its address or of the name of the owner of the appropriation. Notification shall be in such form and it~~ shall include such evidence of ownership as the director may ~~be regulation~~ require. ~~Notice of all other changes may be provided in any manner authorized by the department. -Upon receipt of any new information whether in response to the department's request or through a such notice from an owner of an appropriation,~~ the department shall update its records. The department shall not collect a fee for the filing of ~~any such the information notice or for updating its records.~~

Section _____. Section 46-261, Reissue Revised Statutes of Nebraska, is amended to read:

46-261. (1) The Department of Natural Resources may require an appropriator or his or her agent to furnish the department, by April 1 of any year, a list or map of all lands to be irrigated, the acreage of each tract, and the names of the owners, controllers, or officers for every ditch, reservoir, or other device for appropriating, diverting, carrying, or distributing water to be used as a basis for the distribution of water until April 1 of the following year, and if so ordered such a list shall be furnished by the appropriator or his or her agent to the department.

(2) By April 1, any district or company which has transferred an appropriation pursuant to sections 46-2,127 to 46-2,129 in the previous calendar year shall provide the department:

- (a) A legal description and map of the tracts of land receiving and transferring an appropriation of water, or portion thereof, with the district or company;
- (b) The water appropriation permit number under sections 46-233 to 46-235 and the priority date of the water appropriation;
- (c) A statement on whether objections were filed, whether a hearing was held, and how consent was given;
- (d) The effective date of the transfer of the appropriation; and
- (e) A statement summarizing the water use on the receiving and transferring tracts of land.

~~(3) —(3)~~ The department may require the owner or controller of any canal or ditch to install an approved recording gauge at one or more specific locations to record the amount of water used.

(4) For appropriations not held by an irrigation district, reclamation district, public power and irrigation district or mutual irrigation or canal company, the department may require the owner of an appropriation for irrigation purposes to provide the department with any of or all of the following information relative to the use of water under the appropriation during the previous irrigation season: a list or map of all lands irrigated; the acreage of each tract irrigated; the rate at which water was diverted; the amount diverted; for any lands under the appropriation that were not irrigated, any sufficient cause, as defined in section 46-229.04, which the appropriator claims was the reason for such nonuse; and any other information needed by the department to properly monitor and administer use of water under that appropriation. If the appropriator claims sufficient cause for nonuse, he or she shall also provide the department with such

evidence as is required by the department as a condition for accepting such claimed cause as a sufficient cause.

(5) The department may deny an appropriator the right to ~~shall not furnish~~ any water to be delivered to or used by or through any ditch, reservoir, or other contrivance for the appropriation, use, or storage of water if the appropriator is not in compliance with ~~until~~ this section, with subsection (2) of section 46-230, or with any conditions of any permit, notice or order of the department concerning the appropriation. ~~has been complied with.~~ The department may construct bars or dams or may install such other devices as are necessary to prevent such delivery or use.